

(29,761)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 451

ZIANG SUNG WAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE  
DISTRICT OF COLUMBIA

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[fol. 1] DISTRICT OF COLUMBIA, ss:

**SUPREME COURT OF THE DISTRICT OF COLUMBIA,  
HOLDING A CRIMINAL TERM, APRIL TERM, A. D.  
1919**

Criminal. No. 35614

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

ZIANG SUN WAN, Defendant

INDICTMENT—Filed in Open Court September 30, 1919

The grand jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That at the time of the commission of the offenses set forth in the several counts of this indictment there was situated and established in the District of Columbia a mission to the United States of America for the education of Chinese persons, known as the Chinese Educational Mission, and at said mission there was employed one Theodore Wong, otherwise known as T. Theodore Wong, otherwise known as Theodore T. Wong, and hereafter in this indictment referred to as Theodore T. Wong, as director, one Chang Hsi Hsie as secretary, and one Ben Sen Wu as clerk, of said mission; that said Chinese Educational Mission had at the Riggs National Bank in the District of Columbia, a national banking institution doing business in the District of Columbia, a bank account to the credit of which certain money, funds, and credits had been deposited, and against which there was subject to be drawn, for and on behalf of said Chinese Educational Mission, checks signed by said Theodore T. Wong and countersigned by said Chang Hsi Hsie; and of the aforesaid facts the defendant, Ziang Sung Wan, at the time of the commission of said offense had knowledge.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That on the twenty-ninth day of January, in the year of our Lord one thousand nine hundred and nineteen, and at the District of Columbia aforesaid, said Ziang Sung Wan, late of the District of Columbia aforesaid, a certain house of the said Chinese Educational Mission, feloniously did enter with intent to commit therein the crime of forgery; that is to say, with intent to falsely make and forge, with the purpose to defraud, a certain bank check to be drawn upon said Riggs National Bank for the payment of a certain sum [fol. 2] of money, to wit, the sum of five thousand dollars, from the said bank account of said Chinese Educational Mission; and in so feloniously entering said house as aforesaid, with the intent afore-

said, said Ziang Sung Wan did perpetrate an offense punishable by imprisonment in the penitentiary; that is to say, the offense of house-breaking.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That the said Ziang Sung Wan, in perpetrating the said offense of housebreaking, as aforesaid, with force and arms, in and upon the said Ben Sen Wu, then and there being, feloniously, wilfully, and purposely did make an assault; that is to say, the said Ziang Sung Wan, in perpetrating the said offense of housebreaking, as aforesaid, a certain firearm, of the kind commonly called a pistol, then and there loaded and charged with gunpowder and with metal bullets, and in the right hand of him, the said Ziang Sung Wan, then and there had and held, feloniously, wilfully, and purposely did discharge and shoot off, at, against, and upon him, the said Ben Sen Wu; and that he, the said Ziang Sung Wan, with one of the metal bullets aforesaid, by him out of the pistol aforesaid, then and there by force of the gunpowder aforesaid, discharged and shot off as aforesaid, then and there feloniously, wilfully, and purposely did strike, penetrate, and wound him, the said Ben Sen Wu, in and upon the lower part of the back of the head of him, the said Ben Sen Wu; and that the said Ziang Sung Wan, with another of the metal bullets aforesaid, by him out of the pistol aforesaid, then and there by force of the gunpowder aforesaid, discharged and shot off as aforesaid, then and there feloniously, wilfully, and purposely did again strike, penetrate, and wound him, the said Ben Sen Wu, in and upon the left side of the chest of him, the said Ben Sen Wu; and that he, the said Ziang Sung Wan, by such striking, penetrating, and wounding of him, the said Ben Sen Wu, as aforesaid, did thereby then and there feloniously, wilfully, and purposely give to him, the said Ben Sen Wu, in and upon the lower part of the back of the head of him, the said Ben Sen Wu, one mortal wound, and in and upon the left side of the chest of him, the said Ben Sen Wu, one other mortal wound; of which said mortal wounds he, the said Ben Sen Wu, on the day and year aforesaid, and at the District of Columbia aforesaid, did die.

And so the grand jurors aforesaid, upon their oath aforesaid, do say:

That he, the said Ziang Sung Wan, him, the said Ben Sen Wu, in the manner and by the means aforesaid, in perpetrating the said offense of housebreaking, as aforesaid, feloniously, wilfully, and purposely did kill and murder; against the form of the statute in such case made and provided, and against the peace and Government of the said United States.

## Second Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That the said Ziang Sung Wan, on the said twenty-ninth day of January, in the year of our Lord one thousand nine hundred and nineteen, and at the District of Columbia aforesaid, the said house of the said Chinese Educational Mission there situate, feloniously [fol. 3] did enter with intent to commit therein the crime of larceny, to wit, with intent the goods, chattels, and property in the said house then and there being feloniously to steal, take, and carry away; and in so feloniously entering said house as last aforesaid, with the intent aforesaid, the said Ziang Sung Wan did perpetrate an offense punishable by imprisonment in the penitentiary; that is to say, the offense of housebreaking.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That the said Ziang Sung Wan, in perpetrating said offense of housebreaking, as last aforesaid, with force and arms, in and upon the said Ben Sen Wu, then and there being, feloniously, wilfully, and purposely did make an assault; that is to say, he, the said Ziang Sung Wan, in perpetrating the said offense of housebreaking, as last aforesaid, a certain firearm, of the kind commonly called a pistol, then and there loaded and charged with gunpowder and with metal bullets, and in the right hand of him, the said Ziang Sung Wan, then and there had and held, feloniously, wilfully, and purposely did discharge and shoot off, at, against and upon him, the said Ben Sen Wu; and that he, the said Ziang Sung Wan, with one of the metal bullets aforesaid, by him out of the pistol aforesaid, then and there by force of the gunpowder aforesaid, discharged and shot off as aforesaid, then and there feloniously, wilfully, and purposely did strike, penetrate, and wound him, the said Ben Sen Wu, in and upon the lower part of the back of the head of him, the said Ben Sen Wu; and that the said Ziang Sung Wan, with another of the metal bullets aforesaid, by him out of the pistol aforesaid, then and there by force of the gunpowder aforesaid, discharged and shot off as aforesaid, then and there feloniously, wilfully, and purposely did again strike, penetrate, and wound him, the said Ben Sen Wu, in and upon the left side of the chest of him, the said Ben Sen Wu; and that he, the said Ziang Sung Wan, by such striking, penetrating, and wounding of him, the said Ben Sen Wu, as aforesaid, did thereby then and there feloniously, wilfully, and purposely give to him, the said Ben Sen Wu, in and upon the lower part of the back of the head of him, the said Ben Sen Wu, one mortal wound, and in and upon the left side of the chest of him, the said Ben Sen Wu, one other mortal wound, of which said mortal wounds he, the said Ben Sen Wu, on the day and year aforesaid, and at the District of Columbia aforesaid, did die.

And so the grand jurors aforesaid, upon their oath aforesaid, do say:

That he, the said Ziang Sung Wan, him, the said Ben Sen Wu, in the manner and by the means aforesaid, in perpetrating the said offense of housebreaking, as last aforesaid, feloniously, wilfully, and purposely did kill and murder; against the form of the statute in

such case made and provided and against the peace and Government of the said United States.

### Third Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That the said Ziang Sung Wan, on, to wit, the said twenty-ninth day of January, in the year of our Lord one thousand nine hundred and nineteen, and at the District of Columbia aforesaid, with intent [fol. 4] to defraud, feloniously did falsely make and forge a certain instrument of writing in the form of a bank check, drawn on said Riggs National Bank, for the payment of the sum of five thousand dollars from the aforesaid bank account of said Chinese Educational Mission; and in so falsely making and forging said instrument of writing as aforesaid the said Ziang Sung Wan did forge and sign thereon the name of said Theodore T. Wong, and the said Ziang Sung Wan did further forge and sign thereon the name of said Chang Hsi Hsie, a more particular description of said instrument of writing being to the grand jurors aforesaid unknown and unobtainable, and therefore not here in this indictment set forth by its tenor or more fully described; and in so falsely making and forging said instrument of writing as aforesaid the said Ziang Sung Wan did thereby then and there perpetrate an offense punishable by imprisonment in the penitentiary; that is to say, the offense of forgery.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That the said Ziang Sung Wan, in perpetrating the said offense of forgery, as aforesaid, with force and arms, in and upon the said Ben Sen Wu, then and there being, feloniously, wilfully, and purposely did make an assault; that is to say, the said Ziang Sung Wan, in perpetrating the said offense of forgery, as aforesaid, a certain firearm of the kind commonly called a pistol, then and there loaded and charged with gunpowder and with metal bullets, and in the right hand of him, the said Ziang Sung Wan, then and here had and held, feloniously, wilfully, and purposely did discharge and shoot off, at, against, and upon him, the said Ben Sen Wu; and that the said Ziang Sung Wan, with one of the metal bullets aforesaid, by him out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, discharged and shot off as aforesaid, then and there feloniously, wilfully, and purposely, did strike, penetrate, and wound him, the said Ben Sen Wu, in and upon the lower part of the back of the head of him, the said Ben Sen Wu; and that the said Ziang Sung Wan, with another of the metal bullets aforesaid, by him out of the pistol aforesaid, then and there by force of the gunpowder aforesaid, discharged and shot off as aforesaid, then and there feloniously, wilfully, and purposely, did again strike, penetrate, and wound him, the said Ben Sen Wu, in and upon the left side of the chest of him, the said Ben Sen Wu; and that he, the said Ziang Sung Wan, by such striking, penetrating, and wounding of him, the

said Ben Sen Wu, as aforesaid, did thereby then and there feloniously, wilfully, and purposely, give to him, the said Ben Sen Wu, in and upon the lower part of the back of the head of him, the said Ben Sen Wu, one mortal wound, and in and upon the left side of the chest of him, the said Ben Sen Wu, one other mortal wound; of which said mortal wounds, he, the said Ben Sen Wu, on the day and year aforesaid, and at the District of Columbia aforesaid, did die.

And so the grand jurors aforesaid, upon their oath aforesaid, do say:

That he, the said Ziang Sung Wan, him, the said Ben Sen Wu, in the manner and by the means aforesaid, in perpetrating the said offense of forgery, as aforesaid, feloniously, wilfully, and purposely, did kill and murder; against the form of the statute in such case [fol. 5] made and provided, and against the peace and Government of the said United States.

#### Fourth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That the said Ziang Sung Wan, on, to wit the said twenty-ninth day of January, in the year of our Lord one thousand nine hundred and nineteen, and at the District of Columbia aforesaid, contriving and intending to kill the said Ben Sen Wu, feloniously, wilfully, purposely, and of his deliberate and premeditated malice, in and upon him, the said Ben Sen Wu, then and there being, did make an assault; and that in making the said assault as aforesaid, he, the said Ziang Sung Wan, so contriving and intending to kill him, the said Ben Sen Wu, as aforesaid, a certain firearm, of the kind commonly called a pistol, then and there loaded and charged with gunpowder and with metal bullets, and in the right hand of him, the said Ziang Sung Wan, then and there had and held, feloniously, wilfully, purposely, and of his deliberate and premeditated malice, did discharge and shoot off, at, against, and upon him, the said Ben Sen Wu; and that he, the said Ziang Sung Wan, with one of the metal bullets aforesaid, by him out of the pistol aforesaid, then and there by force of the gunpowder aforesaid, discharged and shot off as aforesaid, then and there feloniously, wilfully, purposely, and of his deliberate and premeditated malice, did strike, penetrate, and wound him, the said Ben Sen Wu, in and upon the lower part of the back of the head of him, the said Ben Sen Wu; and that the said Ziang Sung Wan, with another of the metal bullets aforesaid, by him out of the pistol aforesaid, then and there by force of the gunpowder aforesaid, discharged and shot off as aforesaid, then and there feloniously, wilfully, purposely, and of his deliberate and premeditated malice, did again strike, penetrate, and wound him, the said Ben Sen Wu, in and upon the left side of the chest of him, the said Ben Sen Wu; and that he, the said Ziang Sung Wan, by such striking, penetrating, and wounding of him, the said Ben Sen Wu, as aforesaid, did thereby then and there feloniously, wilfully, pur-

posely, and of his deliberate and premeditated malice, give to him, the said Ben Sen Wu, in and upon the lower part of the back of the head of him, the said Ben Sen Wu, one mortal wound; and in and upon the left side of the chest of him, the said Ben Sen Wu, one other mortal wound, of which said mortal wounds, he, the said Ben Sen Wu, on the day and year aforesaid, and at the District of Columbia aforesaid, did die.

And so the grand jurors aforesaid, upon their oath aforesaid, do say:

That he, the said Ziang Sung Wan, him, the said Ben Sen Wu, in the manner and by the means last aforesaid, feloniously, wilfully, purposely, and of his deliberate and premeditated malice, did kill and murder; against the form of the statute in such case made and provided, and against the peace and Government of the said United States.

John E. Laskey, Attorney of the United States in and for the District of Columbia.

[fol. 6] (Endorsed:) Criminal No. 35614. United States vs. Ziang Sung Wan. Murder in the first degree. Witnesses: E. W. Titus, M. D., Fred Sandberg, M. P., Kang Li, Henry A. Jeffords, King Chu, Y. C. Wang, Lingoh Wang, Morton Prigg, Clifford L. Grant, M. P., Edward J. Kelly, M. P., James T. Bresnahan, Robert Lee Carter, George Spon, Henry F. Halley, Bennett G. Dent, R. V. Fleming, Mildred F. Fugitt. A true bill: Otto J. De Moll, foreman.

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#### SUPREME COURT OF THE DISTRICT OF COLUMBIA

Tuesday, October 7", A. D. 1919.

The court commences its session at ten o'clock in the forenoon by proclamation of the marshal, pursuant to rule of the court, the Honorable Ashley M. Gould, Justice of the said Supreme Court, presiding.

\* \* \* \* \*

#### ARRAIGNMENT: PLEA OF NOT GUILTY

Come as well the attorney of the United States, as the defendant in proper person, in custody of the superintendent of the Washington Asylum and Jail, and by his attorney, J. A. O'Shea, Esquire; whereupon the defendant being arraigned upon the indictment pleads not guilty thereto, and for trial puts himself upon the country and the attorney of the United States doth the like.

Friday, January 9", A. D. 1920.

The court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

\* \* \* \* \*



## VERDICT

Come again the parties aforesaid, in the manner as aforesaid, and the same jury that was respited yesterday; and thereupon after the completion of the argument of counsel, the attorney of the United States says that he will stand upon the forth count of the indictment; whereupon after the charge of the court the said jury retire to consider of their verdict, and returning into court and being asked if they have agreed upon a verdict, upon their oath say that the defendant is guilty of murder in the first degree in manner and form as charged in the said fourth count of the indictment, and by direction of the court the said jury say that as to the first, second, and third counts of the said indictment, the defendant is not guilty; whereupon it is considered by the court that the said defendant go without day as to the said first, second, and third counts and be remanded to the Washington Asylum and Jail as to the said fourth count of said indictment.

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IN SUPREME COURT OF D. C.—Filed January 14, 1920

\* \* \* \* \*

## MOTION FOR A NEW TRIAL

Now comes the defendant, Ziang Sung Wan, by his attorneys, James A. O'Shea, John I. Sacks, and Charles Fahy, and moves the court for a new trial in the above-entitled cause, and for reasons therefor shows to the court:

- [fol. 7] 1. That the verdict is contrary to the evidence.
2. That the verdict is contrary to the weight of the evidence.
3. That the verdict is contrary to the law as given to the jury by the court.
4. That the court erred in instructing the jury, and in refusing instructions requested by the defendant.
5. That the court erred in admitting evidence contrary to law.
6. That the court erred in refusing to admit evidence contrary to law.
7. That new and material facts have come to light since the trial.
8. That error was committed in the impaneling of the jury.

James A. O'Shea, John I. Sachs, Charles Fahy, Attorneys for Defendant.

John R. Laskey, Esq., U. S. Attorney in and for the District of Columbia:

Please take notice that we will call the above motion to the Justice of the Supreme Court of the District of Columbia, holding a term for criminal business in Criminal Court No. one on Friday, January 23, 1920, at ten (10) o'clock a. m. or as soon thereafter as counsel may be heard.

James A. O'Shea, John I. Sachs, Charles Fahy, Attorneys  
for Defendant.

Service acknowledged this 14th day of January, A. D. 1920.

John E. Laskey, U. S. Attorney in and for the District of Columbia.

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### SUPREME COURT OF THE DISTRICT OF COLUMBIA

#### JUDGMENT

Friday, May 14", A. D. 1920.

The court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

\* \* \* \* \*

Come as well the attorney of the United States, as the defendant in proper person, in custody of the superintendent of the Washington Asylum and Jail, and by his attorneys, J. A. O'Shea and Charles Fahy, Esquires; and thereupon the defendant's motion for a new trial having been heretofore argued by counsel is by the court overruled, to which action of the court the defendant by his attorneys prays an exception, which is noted; whereupon the attorney of the United States moves the court to pronounce the sentence of the law in this case; whereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him, and he says nothing except as he has already said; whereupon it is considered by the court that for his said offense the [fol. 8] defendant be taken by the superintendent aforesaid to the asylum and jail aforesaid, whence he came, and there to be kept in close confinement, and that on Wednesday the 1" day of December, A. D. 1920, he be taken to the place prepared for his execution within the walls of the said asylum and jail and then and there between the hours of ten (10) o'clock ante meridian, and two (2) o'clock post meridian of the same day, he, the said defendant, be hanged by the neck until he be dead, and may God have mercy on his soul; and thereupon the defendant, by his attorneys, J. A. O'Shea and Charles Fahy, notes an appeal to the Court of Appeals from the foregoing judgment, and the attorney of the United States in open court waives the issuance of citation: whereupon the court fixes the bond for costs on appeal at one hundred (\$100) dollars.

## IN SUPREME COURT OF DISTRICT OF COLUMBIA

## MEMORANDA

June 3, 1920.—Bond for costs approved and filed.

June 21, 1920.—Time to submit bill of exceptions extended from day to day to and including November 1, 1920.

November 1, 1920.—Bill of exceptions submitted.

## IN THE SUPREME COURT OF DISTRICT OF COLUMBIA

OBJECTIONS ON BEHALF OF DEFENDANT TO BILL OF EXCEPTIONS—  
Filed October 28, 1921

\* \* \* \* \*

Now comes the defendant, by his counsel, and showing to the court, as shown by its records, that notice has been served upon said counsel by the United States attorney for the District of Columbia that on Friday, October 28, 1921, at 10 o'clock in the forenoon, or as soon thereafter as counsel may be heard, said United States attorney will submit to the justice of the Supreme Court of the District of Columbia presiding in Criminal Court No. 1 the bill of exceptions in the above-entitled case, in the form prepared by counsel for the United States, copy of which, it is stated in said notice, was submitted to counsel for the defendant in August, 1921; and further showing to the court that, as shown by its records, an appeal by the defendant to the Court of Appeals of the District of Columbia has been duly noted, but has not been perfected, objects to the signing or settling of said bill of exceptions and to said bill of exceptions upon the following, among other, grounds:

1. As shown by the records of this court, which it is prayed may be considered so far as material as a part of these objections as if set forth herein, the justice who presided throughout the trial of this case is now deceased, and his death occurred prior to the submission or settling of any bill of exceptions herein.

2. No justice other than the one who presided at the trial has the power or authority to sign or settle any bill of exceptions in this case; and said justice who presided at the trial having died without having settled the bill of exceptions, the defendant is entitled to a new trial.

3. The bill of exceptions referred to by the United States attorney in said notice is defective, inaccurate, and unsatisfactory to the defendant in many respects.

[fol. 9] 4. Said bill of exceptions is extremely voluminous, and purports to contain numerous exceptions taken during the trial, but omits important matters and inaccurately states other important

matters which only the justice who presided at the trial could properly settle.

James A. O'Shea, John I. Sachs, Charles Fahy, Attorneys for Defendant.

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IN SUPREME COURT OF DISTRICT OF COLUMBIA.

MOTION TO VACATE JUDGMENT—Filed November 22, 1921

\* \* \* \* \*

Now comes the defendant, by his counsel, and moves the court to vacate the judgment heretofore entered herein to set aside the verdict of the jury and to grant a new trial to him upon the following, among other, grounds:

1. As shown by the records of this court, which it is prayed may be considered so far as material as a part of this motion as if set forth herein, after an appeal had been duly noted from said judgment and pending the perfection of said appeal, the justice who presided throughout the trial of this case departed this life and the bill of exceptions has not been settled.

2. Upon the death of the said trial justice before the settling of the bill of exceptions the defendant was, and is now, entitled to a new trial.

3. Numerous exceptions were taken to rulings of the trial justice during the course of the trial, but the bill of exceptions has not been settled, and the defendant is entitled to a new trial, necessitating the vacating of said judgment and the setting aside of the verdict of the jury, by reason of the death of said trial justice without having settled the bill of exceptions.

4. The death of the said trial justice left no one with power or authority to settle the bill of exceptions.

James A. O'Shea, Chas. Fahy, Attorneys for Defendant.

Affidavit of James A. O'Shea to above paper omitted in printing.

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[fol. 10] SUPREME COURT OF THE DISTRICT OF COLUMBIA

Tuesday, November 22, A. D. 1921.

The court resumes its session pursuant to adjournment, Mr. Chief Justice McCoy presiding.

\* \* \* \* \*

ORDER OVERRULING MOTION TO VACATE

Now comes the defendant herein by his attorneys, J. A. O'Shea and Charles Fahy, Esquires, and files a motion to vacate judgment,

to set aside the verdict and grant a new trial in this case, which motion is by the court overruled, and to which action of the court the defendant by his said attorneys prays an exception, which is noted.

Wednesday, November 30, A. D. 1921.

The court resumes its session pursuant to adjournment, Mr. Chief Justice McCoy presiding.

\* \* \* \* \*

#### ORDER MAKING BILL OF EXCEPTIONS PART OF RECORD

The court having this day signed the bill of exceptions taken at the trial of this cause and heretofore submitted as of the time of the noting thereof at the trial, now hereby orders the same of record nunc pro tunc.

#### MEMORANDUM

January 17, 1922.—Time to file transcript extended to and including March 15, 1922.

#### IN SUPREME COURT OF DISTRICT OF COLUMBIA

\* \* \* \* \*

#### ASSIGNMENT OF ERRORS—Filed March 2, 1922

Now comes the defendant, Ziang Sung Wan, by his attorneys, and assigns for review to the Court of Appeals of the District of Columbia, on appeal in the above-entitled cause the following errors committed by the trial court:

1. In overruling the defendant's challenge for cause addressed to Fred H. Schmidt, a juror, who said he would go into the jury box with an opinion which would require evidence to remove; later challenged by Government.
2. In overruling the defendant's challenge for cause addressed to John W. Edelin, and in requiring the defendant to exercise peremptory challenge to the said John W. Edelin.
3. In overruling the defendant's challenge for cause addressed to George R. Marshall, and in requiring the defendant, after having exhausted nineteen challenges to excuse the said George R. Marshall. (Rec. 5-6.)
4. In refusing to require the Government to elect between the various counts in the indictment. (Rec. 6.)
5. In permitting Fohan H. Chen to state where he would see the defendant in 1917. (Rec. 10.)

6. In permitting Fohan H. Chen to state conversations with the defendant about his finances in 1918 and to detail what the defendant had stated in 1918 as to where he kept his bank account.

[fol. 11] 7. In overruling the motion to strike out the testimony as to where the defendant kept his bank account in 1918.

8. In permitting Fohan H. Chen to be asked, "Did he, the defendant, say anything about having money," and in permitting the said Fohan H. Chen to state what the defendant Wan told him relative to receiving two thousand dollars from his home and wanting to deposit it in the bank.

9. In overruling the motion to strike out all of the testimony of Chen about the moving-picture enterprise. (Rec. 11.)

10. In permitting Charles Diehl to identify certain records that he produced in response to a subpoena duces tecum from the United States Mortgage & Trust Company, New York City, One hundred and twenty-fifth Street branch.

11. In permitting Diehl to state what was contained in Diehl Exhibit #2. (Rec. 12.)

12. In permitting Diehl to state "these are the signature cards that are customarily filed with us."

13. In permitting Diehl to state that the signature on each of the cards after the printed words "signature" was written in his presence by Z. S. Wan.

14. In receiving in evidence the cards Diehl #1 and Diehl #2.

15. In permitting Diehl to state the contents of Diehl #2

16. In permitting the witness to state what Diehl #2 represented.

17. In permitting the witness to state what the paper Diehl #3 represented. (Rec. 13.)

18. In permitting the witness Diehl to state the words "International Bank Company" were the marking of the receiving teller, and to state that he had a slight recollection of the account, although he could not recall any direct conversation with the man who made the deposit or opened the account, and what constituted the deposit on that occasion.

19. In permitting the witness to state that Diehl #5 was the bank's original ledger sheet and to go into the details of the account as indicated on the ledger sheet.

20. In permitting the witness to state as to whether or not he was familiar with the signature on Diehl Exhibit #7 (Rec. 15) and to admit it in evidence.

21. In permitting the witness to state that the signature on Diehl #7 is that of Z. S. Wan.

22. In permitting Diehl #7 to be offered in evidence for the purpose of comparison.

23. In permitting Israel Weinberg to state that last November a year ago he had a business transaction with the defendant and a lease was made for a moving-picture place, the price paid, and the passing of the money.

24. In permitting the witness to go into the details of an alleged business transaction with the defendant on the 9th day of September, 1918.

25. In permitting the witness to state the details of a conversation with the defendant on September 9, 1918, respecting the lease and the payment of the money for the sale of the moving-picture proposition.

26. In permitting the witness to state as to what bank the defendant said he would get the money from.

[fol. 12] 27. In permitting the district attorney to state in front of the jury that it is a very material thing to prove by Weinberg the defendant got it from the United States Mortgage & Trust Company, whether it is the same bank in which he had that account. (Rec. 17.)

28. In permitting the witness Isaac Topp to testify along the line as to whether or not he had any transaction with the defendant.

29. In permitting the witness to state that the defendant bought a lease from Mr. Weinberg for a moving picture the witness took care of.

30. In permitting the witness to state that he saw the defendant November, 1918, at the latter's house and had a conversation with him.

31. In permitting the witness to state that he asked the defendant why he didn't pay the rent, and the defendant told him he had no money.

32. In permitting the witness to give the details as to why the defendant didn't have any money.

33. In permitting the witness to give the details of an alleged conversation relating to the lease and the failure to pay the rent.

34. In permitting the witness to state that Wan said he was not working and that he didn't have a job and that he was looking for work.

35. In overruling the motion to strike out the testimony of Topp regarding the condition of the defendant and the alleged conversation that he had with him about the 20th or middle of November, 1918.

36. In permitting the witness Charles D. Ratcliffe to identify the signature card of Mr. B. S. Wu (Ratcliffe #1).

37. In permitting the witness Ratcliffe to examine certain cancelled checks and to give his opinion thereof.

38. In permitting the witness to be asked the leading question if he had cashed any check with Mr. Wu's signature.

39. In permitting the witness to state that he had cashed a check for Mr. Wu when he presented them himself.

40. In permitting the witness to identify Ratcliffe #2 and Ratcliffe #3, Ratcliffe #3 being a paper purporting to show the balance of Mr. Wu at the Munsey Trust Company on January 31, 1919, and to state the balance in bank on that date.

41. In permitting the witness to identify Ratcliffe #8.

42. In permitting the Government to introduce in evidence the check identified by Ratcliffe as Ratcliffe #2 and identified by Mr. Diehl as Diehl #6 and to exhibit the same to the jury.

43. In permitting the witness Kang Li to give the location of the Chinese Mission House at 2023 Kalama Road, and that the defendant showed to him "a rather cool attitude."

44. In permitting the witness Robert Lee Carter to state to Mr. Spohn outside of the hearing and presence of the defendant that in January, 1919, he took the defendant to a room near one o'clock on Wednesday night.

45. In permitting the witness Bennett G. Dent, paying teller, Riggs National Bank, to state that Mr. Van presented a check to the witness for five thousand dollars and a letter. (Rec. 32.)

[fol. 13] 46. In overruling the motion to strike out as to the contents of the check.

47. In permitting counsel for the Government to state before the jury that he would prove a check was given to Wan and that the defendant stated it was destroyed. (Rec. 32.)

48. In permitting the witness Dent to state conversations he had when he showed the check to Mr. Taylor, and what Van did when he presented the check.

49. In refusing to strike out the testimony of the witness as to other checks and in allowing Dent to state that in making the comparison of checks the signatures on the checks were irregular.

50. In permitting the witness to state that he is familiar with the handwriting on the cancelled checks with which he compared the checks presented by Van, and being asked whose signature that bore he stated that it bore the signature of Hsieh and Dr. Wong.



51. In permitting the witness to explain where the signature on the check presented differed from the checks used in the comparison.

52. In permitting the witness to state that he had recognized Dent #2.

53. In permitting the witness George O. Vass, to state that the check was a check drawn on the account of the Chinese Educational Mission and to compare signatures.

54. In permitting the witness Robert E. Sanders to testify as to what occurred in January, 1919, when he saw Mr. Vass and Mr. Ailes at the Riggs Bank.

55. In overruling the motion to strike out all of the testimony of the witness Sanders.

56. In permitting the witness Robert G. Fleming to state who was authorized to sign checks on the Chinese Educational Mission account.

57. In permitting the witness to state the conversation he had with Mr. Vass on January 30, 1919, and in permitting the witness to give the contents of the check.

58. In permitting the witness to compare the signature on the \$5,000 check with one of the signatures on one of the cancelled checks of the mission and to give his opinion thereof.

59. In permitting the witness to be asked if he was familiar with the handwriting of Dent #1 and to give his opinion and to give an opinion on stub 24.

60. In permitting the photographic exhibit Sandberg #1 and #2 to be offered for exhibition to the jury.

61. In permitting the pictures taken on February 1, 1919, to be offered in evidence. (Rec. 53.)

62. In permitting the witness Sandberg to explain Sandberg #10 and to permit it in evidence.

63. In permitting the witness to state that a bullet had rebounded from the wall and was on the floor.

64. In permitting Sandberg to state that Sandberg #11 is a photograph of stub 24 of the check book (Dent #1); #12 is the photograph taken of the hotel register of the Harris Hotel (Prigg #1); #13 is a photograph taken from book, of a check (bearing the writing of "Z. S. Wan"); #14 is taken from a piece of paper marked "Burlingame #1" (containing name and address of defendant).

[fol. 14] 65. In permitting the witness J. Ramsey Nevitt to give and describe the result of the autopsy on all three bodies and to indicate on — counsel for the Government.

66. In permitting the check (Ratliffe #8) being introduced in evidence. (Rec. 67.)

67. In permitting the alleged statement of the defendant (Rec. 74) to go to the jury in response to "just leave the murder out of it, but who went into the bank and asked to get this check cashed."

68. In permitting the details of the statement to be given in evidence of what transpired at the Chinese Educational Mission house. (Rec. 75.)

69. In permitting the witness to detail a conversation he had with the defendant on Saturday before he took him to the Chinese Mission House. (Rec. 75.)

70. In permitting witness Burlingame to tell of important developments during conversations between Grant, defendant, and witness and other while defendant was confined.

71. In holding as a matter of law that the Government did not have to show the voluntary nature of the alleged admissions of defendant.

72. In refusing to call all who had anything to do with obtaining alleged admissions and holding as a matter of law the alleged confessions was voluntary.

73. In introducing the check book with the stub in evidence in the testimony of Burlingame (Rec. 79) together with the photographic copies of the handwriting used in the alleged conversation with the defendant.

74. In permitting the witness Burlingame to give the details of alleged certain admissions of defendant at sergeant's room at station house.

75. In permitting witness to state that the defendant after a little talk expressed a desire to go to the house again after the witness had asked him the position of one of the men Wu had killed.

76. In holding as a matter of law that the witness Burlingame was under no obligation to tell the defendant of his rights. (Rec. 90.)

77. In denying the motion to strike out an alleged conversation Clifford L. Grant had with the defendant to the effect "That has nothing to do with the murder; tell me who went to the bank." "If you get the man who went to the bank, you will get the murderer." (Rec. 100.)

78. In permitting the witness Grant to detail a conversation wherein Major Raymond Pullman is alleged to have shown certain papers to the defendant.

79. In permitting the witness Grant to state the conversations he had with the defendant Wan upon the ground that the voluntary character of the same had not been shown. (Rec. 102.)

80. In holding the statement, "If you are guilty and your brother is innocent, now is the time to tell it. I want to know" is not holding out an inducement. (Rec. 102.)

81. In holding that the statements of the witness Grant "by appealing to the better side of his nature" and by the use of the expression "told him that things looked pretty black for him"; that [fol. 15] he talked this thing over and the development showed me that he knew more about the crime than he was telling and I asked him for the truth; told him the investigation so far looked pretty black for him" (Rec. 102), were not inducements or duress.

82. In holding that the expression used by Grant about telling the truth was not an inducement. (Rec. 103.)

83. In holding that the alleged confession made by the defendant after the foregoing instrument of Grant, was voluntary and in saying in the presence of the jury "I think you are right about this, but I don't think that is holding out any inducement to him."

84. In overruling the motion, which was renewed, to strike out the testimony of alleged confessions. (Rec. 103.)

85. In permitting the card, Dent #2, to be offered in evidence.

86. In refusing to permit the witness Grant to give the reason as to why he didn't comply with the request of the defendant for permission to see his brother.

87. In refusing to permit the counsel for the defendant to refer to the building on Fifteenth Street as a clinic. (Rec. 106.)

88. In the action of the court in ruling as a matter of law that any alleged reward offered for the apprehension of the man supposed to be guilty of the murder could not be paid to officers in the case.

89. In refusing to make the witness Grant answer as to the question, "Would the fact *that* the defendant's conviction make any difference as to who would get the reward?"

90. In refusing to make the witness Grant answer as to why he didn't send the detectives to the mission house on Saturday. (Rec. 106.)

91. In refusing to make the witness Grant answer as to whether or not he came across any woman's name during the investigation.

92. In refusing to allow the witness to answer as to what his feelings were after he had obtained a statement from him about the handwriting. (Rec. 118.)

93. In refusing to permit the witness Grant to use the word "bad" instead of "black" and in refusing to allow the witness to correct the statement of the other day when he used the word "black" and in stating to the jury that the difference was immaterial.

94. In refusing to permit the witness Pullman to answer what experience he had had before he became a policeman. (Rec. 125.)

95. In refusing to permit the contradiction of the witness Pullman of an alleged interview given to the Washington Times.

96. In permitting the alleged signed confession of the defendant to be offered in evidence on the ground that it had not been shown to be a voluntary confession, but, on the contrary, was shown to be an involuntary confession, and on the grounds previously stated to the court and further upon the ground it was not a correct stenographic copy. (Rec. 151.)

97. In admitting in evidence the pictures identified by Mr. Ganzert and by Chen. (Rec. 176.)

98. In admitting in evidence the notebook (176) identified by Kang Li.

[fol. 16] 99. In refusing to strike out the testimony of F. H. Chen on the grounds as stated at the conclusion of his testimony. (Rec. 177.)

100. In refusing to strike out Diehl #1 and #2. (Rec. 177.)

101. In refusing to require the Government to elect.

102. In refusing to permit the defendant's counsel to go into the alleged conversation which K. S. Wang had with defendant as one of the circumstances surrounding the alleged making of the confession (220-221) to show its voluntariness or not.

103. In permitting the district attorney to comment upon the evidence while cross-examining the defendant. (Rec. 228.)

104. To the action of the court in examining the defendant Wan. (Rec. 233-234-235-236-237-238.)

105. In refusing to permit Dr. Gannon to answer a hypothetical question.

106. In refusing to permit Dr. Augustinius to answer a hypothetical question.

107. In permitting Burlingame to narrate circumstances about a stick pin. (Rec. 249.)

108. In attempting to contradict Wan on collateral matters.

109. In refusing prayer of defendant numbered five.

110. In refusing prayer of defendant numbered six.

111. In refusing prayer of defendant numbered eleven and a half.

112. In refusing prayer of defendant numbered twelve.

113. In refusing prayer of defendant numbered eighteen.

114. In refusing prayer of defendant numbered nineteen.

115. In refusing prayer of defendant numbered twenty.

116. In modifying prayer of defendant numbered sixteen.

117. In holding in the judge's charge that the keeping of the brother away from the defendant was not coercion.

118. In overruling exceptions to the signing of the bill of exceptions by Chief Justice McCoy, Justice Gould, who presided at the trial, having died in the meantime.

119. In overruling the motion to vacate the judgment, set aside the verdict, and grant a new trial.

120. To the action of Chief Justice McCoy, as contrary to law, who did not preside at the trial, in holding that he could allow and sign a true bill of exceptions, Justice Gould having died in the meantime.

121. To the authority, as unwarranted and unfounded in law, of Chief Justice McCoy in settling, striking out, and correcting various disputed questions and parts of the bill of exceptions, specifically enumerated at the latter part of the bill of exceptions, on the grounds specifically enumerated in each of the disputed parts of the bill of exceptions.

122. To the action of Chief Justice McCoy on the ground that his action could not, does not, and did not settle in fact the disputed questions between counsel for the Government and the defendant, the defendant's counsel not stipulating as to the correctness of the typewritten transcript of the trial.

123. In the holding by Chief Justice McCoy that the motion to vacate the judgment, set aside the verdict, and grant a new trial was not the only and proper way to settle the bill of exceptions.

124. To the general authority of Chief Justice McCoy to settle and sign the bill of exceptions.

[fol. 17] 125. To the specific authority of Chief Justice McCoy to settle the bill of exceptions.

126. To the action of the court in holding the court, Ashley M. Gould, justice presiding at the trial, having died in the meantime, Walter I. McCoy, chief justice now presiding in criminal court No. 1, over the objection and exception on behalf of the defendant, after an examination of the typewritten transcript of the stenographic notes of the trial certain original exhibits used at the trial, and interviewing the stenographer who reported the proceedings at the trial as to the points where it is stated in the bill such notes were consulted, being satisfied that he can allow a true bill of exceptions, because where the transcript of the stenographer's minutes has been relied upon it is not disputed or admitted that the transcript correctly reports what took place at the trial; and because where the stenog-

rapher's minutes and the transcript thereof differed it is not disputed or admitted that the minutes are correct, and because where there has been a difference as to exhibits a comparison by the court of the exhibits is relied upon to sustain the rulings of the court, has accordingly signed the defendant's bill of exceptions and made the rulings in regard to the bill of exceptions aforesaid to have the force and effect as aforesaid now for then this 30th day of November, A. D. 1921.

127. To the signing of the bill of exceptions by the Chief Justice who was not in fact presiding judge, and consequently unable to sign the bill of exceptions, counsel not stipulating or admitting the correctness of the bill of exceptions.

James A. O'Shea, John I. Sacks, Chas. Fahy, Attorneys for the Defendant, Ziang Sung Wan.

Service of copy of the foregoing is acknowledged this 2d day of March, A. D. 1922.

Peyton Gordon, United States Attorney in and for the District of Columbia.

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IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

\* \* \* \* \*

DESIGNATION OF RECORD—Filed March 9, 1922

The clerk will hereby please make up the record for the Court of Appeals, to consist of the following:

1. The indictment.
2. The plea.
3. The verdict of the jury.
4. Motion for a new trial.
5. Order overruling motion for a new trial and exception thereto.
6. Judgment.
7. Appeal in open court and appeal bond.
8. Orders extending time for filing bill of exceptions and transcript of record.
9. Objection of deft. to proposed bill of ex. of Govt.
- [fol. 18] 10. Motion to vacate judgment, set aside verdict, and grant a new trial, overruling of same and exception thereto.
11. Bill of exceptions submitted and signed.
12. Bill of exceptions.

13. Assignment of errors.
14. This designation of record.

O'Shea, Sachs & Fahy, Attorneys for Deft.

Service of copy of foregoing acknowledged this — day of March,  
A. D. 1922.

Peyton Gordon, U. S. Dist. Atty., Per W. Gilchrist.

#### MEMORANDUM

March 13, 1922.—Time to file transcript extended to and including April 15, 1922.

#### SUPREME COURT OF THE DISTRICT OF COLUMBIA

#### CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,  
District of Columbia, ss:

I, Morgan H. Beach, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 34, both inclusive, to be a true and correct transcript of the record, according to directions of counsel, herein filed, copy of which is made part of this transcript, in cause No. 35614, wherein the United States of America is plaintiff and Ziang Sun Wan is defendant, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 3rd day of April, 1922.

Morgan H. Beach, Clerk, By W. E. Williams, Assistant Clerk.  
(Seal.)

#### IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING A CRIMINAL TERM

[Title omitted]

#### BILL OF EXCEPTIONS

Be it remembered that, in the Supreme Court of the District of Columbia, at the city of Washington, in said District, on, to wit, the 9th day of December, 1919, the above cause came on for hearing [fol. 19] before Mr. Justice Gould, there being present on behalf of the United States John E. Laskey, Esq., United States attorney for the District of Columbia, and Bolitha J. Laws, Esq., assistant United States attorney for the District of Columbia; the defendant



being present and also his counsel, Messrs. James A. O'Shea, John I. Sacks, and Charles Fahy.

Thereupon Mr. FRED H. SCHMIDT was called and sworn as a talesman, and, in response to questions propounded by the court, qualified as a juror and took his seat in the box; thereupon, being examined on behalf of the United States, he stated that he recalled having read about this case, having discussed it with his family and friends, and it did leave an impression on his mind as to the guilt or innocence of the defendant at that time; being asked if he now had that impression, he replied: "Not but what it might be qualified by evidence;" that he knew the duty of a juror to sit in the box and base his verdict solely on the evidence as produced on the witness stand, and could disregard any impression he now had and decide the case exclusively on the evidence, not influenced by any impression he may have heretofore had. Being questioned by counsel for defendant, he stated that it is correct that if he took his seat in the box, he would go into the box with the opinion which he had formed, which would require evidence to remove; thereupon counsel for the defendant challenged the said juror for cause. Thereupon, being questioned by the court, the said juror stated that the opinion he had formed was based on newspaper accounts of the case, unsworn testimony, and, being asked, "After hearing the testimony, would your mind be affected by whatever preconceived ideas you had?" he replied, "I would be bound by my pledge and by the evidence." In response to the further question of counsel for the defendant if he would go into the jury box with an opinion which would require evidence to remove, he said, "It would." Thereupon, the court overruled the said challenge, to which ruling of the court counsel for the defendant prayed an exception, which exception was duly allowed. Thereafter, after the defendant had exhausted seventeen peremptory challenges, the following occurred: "Mr. Laskey: If your honor please, there is an exception in the record, based upon some answer made by Mr. Schmidt as to it requiring evidence to eliminate from his mind an impression that he has. I wish to eliminate that from the record, and I will excuse Mr. Schmidt on that ground"; the Government counsel thereby exercising a peremptory challenge.

Thereupon, Mr. JOHN W. EDELIN was called as a talesman and duly sworn, and, in response to questions propounded by the court, qualified as a juror. Being examined by counsel for the defendant, he stated that he had no prejudice against a Chinaman on trial for crime; that the fact that a Chinaman was on trial would make no difference in his opinion from a white man being on trial; that he might have some prejudice against Chinamen in various political questions or things in a Chinaman's life that might come up that might affect his judgment of the Chinese in some respects. For instance, he was opposed to the immigration of Chinese; that he was prejudiced to that extent and would not have a Chinese usurp a position or place properly belonging to citizens of this country;



that is, his attitude in a specific instance or case, and, it may be, would affect his general attitude were the Chinese not an American [fol. 20] citizen, which he knew he could not become; he does not know about it affecting his general attitude; it might on that particular subject of immigration, no other subject that he now recalls; that if the Chinaman were in this country and had gotten past that immigration towards which he had an attitude he would not have that specific attitude towards him, but would still feel he should not have been allowed to come into the country; can not say that specific attitude is bound to affect his general attitude, but it might do so. Thereupon, counsel for the defendant challenged the said juror for cause. In response to other questions propounded by the court, the said juror stated that if a Chinaman lawfully in this country were charged with a crime and he were on the jury, he would give him the same treatment he would give an American citizen, and if the Chinaman subscribed to the oath he believed in, would believe him on the witness stand under the circumstances that he would believe a white man, and when it came to the trial of a Chinaman, his opposition to the Chinese under the immigration question would not affect his judgment sitting as a juror in the case. In response to defendant's counsel, the said talesman stated he would give the same consideration to a Chinese as to a white man if they were testifying under the same conditions in a case where a Chinaman and a white man both testified and it came within the province of the talesman to decide which of the two was telling the truth. Thereupon the court overruled the said challenge, to which ruling of the court counsel for the defendant prayed an exception, which exception was duly allowed. At the close of his examination the said talesman Edelin was peremptorily excused by the defendant.

Thereupon Mr. GEORGE R. MARSHALL was called as a talesman and, duly sworn, and in response to questions propounded by the court, qualified as a juror, and, being examined on behalf of the United States, stated that he had read about and discussed this case, and his reading and discussion left with him an opinion as to the guilt or innocence of the defendant; that he knew the duty of a juror to decide a case solely on the evidence, and could take his seat in the box and eliminate from his mind the opinion formed with reference to the defendant, and try the case solely on the evidence, uninfluenced by that opinion. Being examined by counsel for the defendant he stated that if the case should start at the present moment with himself a juror, he would have an opinion concerning the case based upon what he read in the paper, he would have an opinion and it would require evidence to remove it. Thereupon, counsel for defendant challenged the said juror for cause. In response to questions asked him by the court he stated he could dispossess himself of that opinion when he took his oath as a juror, decide the case upon the testimony, and the opinion would not affect him a particle. Thereupon, the court overruled the said challenge. Being further questioned by counsel for the defendant, he

stated it would take evidence to change the impression he had from reading the papers; "of course it would, certainly." Being further questioned by the court, he said while he had formed an opinion from reading the unsworn newspaper statements, he could dispossess himself of that opinion when he took his oath as a juror, and try the case according to the evidence, and that opinion would not affect him a particle after he heard the evidence. Being further [fol. 21] questioned by counsel for the defendant, he said he meant he would not let opinion have any weight on the evidence whatever, and the newspaper talk, that it was some time ago when he read the paper, and naturally at that time, in his family and maybe outside in his work, he may have expressed his opinion; that he had discussed the matter with various people, had thought various things about the case from reading the paper, and had now that opinion in his mind from what he read in a newspaper, a newspaper opinion, and would go in the box and take his seat with these eleven other men and would require evidence to be introduced in this case to change that opinion, to some extent. Being further questioned by the court, he said he now had not a bit of an opinion as to whether this defendant was guilty or innocent, that he could not call this defendant's name now, may know his name by reading it in the paper, "but could not call his name now as to which of the three," and has not now any opinion as to whether this defendant that sits here is guilty or innocent. Being further questioned by counsel for the United States, he stated that when he would take his oath as a juror he could eliminate from his mind every particle of any opinion that he had, based upon newspaper articles that he had read, and it would not affect him in the least in reaching a decision upon the evidence. Being further questioned by counsel for the defendant, he said he still entertained an opinion in this case from the newspapers he had read. Thereupon, counsel for the defendant renewed his challenge, which challenge the court again overruled, to which action of the court, in both instances, counsel for defendant prayed exceptions, which were duly allowed.

Thereupon, the defendant having exhausted nineteen peremptory challenges, the United States and counsel for the defendant announce themselves content with the jury, and the jurors were duly sworn.

Thereupon counsel for the defendant moved that the Government be required to elect upon which one of the counts in the indictment it would go to the jury, which motion was overruled, to which ruling of the court defendant prayed an exception, which exception was duly allowed.

Thereupon, to maintain the issues upon this part joined in this cause, the United States produced as a witness Mrs. GERTRUDE BARTELS, who, having been duly sworn, gave testimony tending to prove that she lived at 313 112th Street, New York City; that she knew Z. S. Wan (whom she identified in the court room): that he lived with her at the above address with his brother Van for more

than a year; once Wan went away, about August or September, 1918, to Brooklyn, where he opened a moving-picture show, returning the end of September, or in October; not sure about that. Was over there about two months. Witness identified Mr. Van, brother of the defendant, and gave further testimony tending to prove that Mr. Wan left New York City for Washington January 22, 1919, on which day she had a conversation with him in his room at her house.

Q. What was it about?

A. Well, he was sick for quite a while, and lived for about two weeks on black coffee and toast, and all of a sudden he said his [fol. 22] stomach hurt too much and he began to drink whiskey. \* \* \* So of course he went a little out of his head, and I gave him a calling down to stop it. At first he seemed to mind, and afterwards he wanted some more; and I told him to get out and go to the hospital, because I had too much to do to take care of him in the house, and the hospital was the right place for him, because he was too sick and needed care. \* \* \* He got kind of stubborn and said, "All right; if you do not want me in your house any more, I will get out."

Did not say where he was going; he went that afternoon with his brother for a walk, but could not go any further than the park, and took a rest; he left witness's house on the 22nd, Wednesday; did not state where he was going. He was not at the house the next day or the following day; the next time he was there was a week from Thursday, the 23rd of January, 1919, that is, January 30, 1919. Thereupon the following occurred:

Q. Do you remember Mr. Van receiving any communications on Monday?

A. He received——

Q. (Interposing.) The 27th of January?

A. He received two telegrams on Monday and two on Tuesday.

Witness went to his room on Wednesday morning, January 29th; did not find Mr. Van; witness went to the room on Thursday, the 30th, but Van was not there. Witness saw him that Thursday afternoon between four and five o'clock on the street, going to the store; did not see Wan that day, and saw him the next day, Friday, in the morning, and had a conversation with him then in his room; he was laying in bed sick; asked him how he felt now, and he said he was worse again; had had a steak with his friend, and was feeling sick again. So witness told him to go to the hospital; that was the best place for him. He said as soon as he got a little bit stronger he would do it. The following morning, Saturday, about nine o'clock, three officers came and showed witness Mr. Wan's picture; one was Mr. Kelly, does not remember names of the others; witness brought them up to Mr. Wan's room, where they stayed about an hour; when they went out witness went up and saw Mr. Van; heard him speaking in the hall; did not see Mr. Wan after that.

On cross-examination witness testified Mr. Van first came to live in her house, and Mr. Wan came and stayed several times over Saturday, and in about six weeks or two months came to live there.

He was not sick when he came, but was very sick after he threw up the moving picture and on account of Spanish influenza; was laid right down in witness's house with the influenza about a week or ten days, witness thinks; does not just remember the time, because he did get well for a while and then began to complain about his stomach, and he looked very bad, too. Mr. Van was with him while he had influenza, but after Wan got well Van went to Providence and left Wan by himself. First noticed Wan taking whiskey Friday or Saturday, around the 19th or 20th of January, before witness had words with him; they had just a small little bottle. Witness did not suggest what hospital he should go to. Van returned to New York a couple of weeks before Christmas. The conversation witness had with Wan was in his room, the last day he [fol. 23] was in there, and the day before he stood in the hall, because the two had had a quarrel, and witness thought it the best thing he should not show his face to Wan, and kept him in the hall; then it was that his stomach hurt him. The first two telegrams to Van witness received herself; did not open them, and does not know what was in them; thinks the first came around dinner, one or two o'clock. On the Monday following the 22nd of January (that is, Monday, January 27th) the two telegrams came. The first came and the other came about half an hour later, and witness handed those two to Van, and after that day witness next saw Van the following Thursday on his way to the store, and saw Wan on Friday morning in his room between 11 and 12 o'clock, in bed, sick. When witness saw Van on Thursday, he was going to the store, and saw him come out of the house between 4 and 5 o'clock; this was first time witness had seen Van since the preceding Monday. When the officers came on Saturday, witness went to Wan's room with them; Wan was laying in bed and Van was standing with his hat and coat on, just back from the store, and witness led the three gentlemen in and told Mr. Wan there were three gentlemen for him, and remembers a big, stout gentleman with dark eyes who went to Mr. Wan and spoke to him and wanted to know what for he had gloves on in bed, and the two other gentlemen stood around Mr. Van; so witness went out, and while going out heard something about Washington, but does not know what it was.

Thereupon FOHAN H. CHEN, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he stayed in New York; that he knows Z. S. Wan (whom he recognizes in court); met him in New York in 1917, in the summer time. Thereupon the following occurred:

"Q. Where would you see him?"

Thereupon counsel for the defendant objected to the question at this time unless its relevancy is shown more definitely, which objection was overruled by the court, to which action of the court counsel for the defendant prayed an exception, which was duly allowed. Thereupon the witness stated first met the defendant at

110 Morningside Drive; would see him once in a while in the neighborhood of Columbia University. Thereupon the witness was asked if he had any conversation with the defendant about his finances in 1918, to which question counsel for the defendant objected on the ground of remoteness, which objection the court overruled, to which action of the court defendant prayed an exception, which was duly allowed. Thereupon the witness stated that about in 1918, does not know whether in July or August, or the exact time, in witness' apartment in New York City, defendant asked him where he kept his banking account; to which testimony counsel for the defendant objected and moved that it be stricken out, which objection and motion were overruled by the court, to which action the defendant prayed an exception, which was allowed. Witness told him he deposited in the United States Mortgage and Trust Company on 125th Street.

"Q. Did he say anything about having any money? \* \* \*

"A. He told me that he wanted to deposit his money in the bank, see.

"Q. Did he say where he got his money?"

[fol. 24] To which testimony and question counsel for defendant objection, which objection was overruled, to which action of the court defendant prayed an exception, which was allowed. Wan said he got \$2,000 from his home and wanted to deposit it in the bank, and it was sent from his home in Shanghai for educational purposes; that he wanted to invest his money in the motion-picture business, and witness went to the motion-picture place and spoke to Wan there, who said he was just fixing the furniture, the motion picture had not started; told him he had the place; it was in Brooklyn, witness thinks; does not remember the exact place; thinks it was before November, 1918, because witness went back to China in November, 1918, returning October of 1919. Thereupon counsel for defendant moved the court to strike out all the testimony about the moving-picture enterprise; the court said: "Well, standing alone, I would grant your motion; unless connected up by other testimony of course it goes out." Thereupon counsel for the defendant said: "Of course, with that reservation, I will not press it at this time."

On cross-examination witness when asked if last summer he and Wan were very good friends, replied no, that they had acquaintance. Wan visited at witness's apartment once in a while; witness visited him once at the motion-picture theater in Brooklyn; the time Wan visited witness in July or August, 1918, so far as witness remembers, is the only time Wan visited him; does not think of any special reason why Wan should come to him to find out where he should deposit his money. No one else was present at the conversation; he simply asked witness the bank where he kept the deposit. Witness first told about this conversation to a detective from the Department of Justice, New York City, about two weeks ago, he thinks; positive about that because he just got back from Shanghai; got back in October, but did not receive any man from the Government until November, about two weeks ago; witness got back to New York October 2d.

Witness further testified he saw Wan at this moving-picture place before November, 1918; witness happened to go there because Wan told witness he had a moving-picture house, and wrote witness a letter, which he destroyed, because he went back last year and when he picked up things of no importance, he would destroy them.

On redirect examination witness testified that he sometimes saw Wan in the neighborhood of Columbia University at some Chinese restaurant at night.

Thereupon CHARLES DIEHL, a witness for the United States, being first duly sworn, gave testimony tending to prove that he is assistant manager of the 125th Street bank of the United States Mortgage and Trust Company, New York City, and has produced in response to a subpoena certain records of the bank, which he hands to counsel for the United States. Being shown certain cards (Diehl Exhibit 1 and Diehl Exhibit 2) he states he recognizes them; being asked whose handwriting it is after the printed word "address" on Diehl Exhibit 1, counsel for defendant objected. Counsel for the United States said he was simply identifying cards as coming from the files of the bank. The objection was overruled by the court, to which action of the court counsel for defendant prayed an exception on the ground that this testimony was immaterial and irrelevant, which exception was allowed. The witness then stated that it was [fol. 25] his handwriting, as was also the handwriting after the word "business," "introduced by," and "date," and says also his handwriting after the same words on Diehl Exhibit 2; being asked, "What are those cards?" counsel for defendant objected, which objection was overruled, to which ruling of the court defendant prayed exception, which was allowed, and the witness said, "These are the signature cards that are customarily filed with us by customers of our bank when they become depositors, at the time they open an account," to which testimony defendant objected and moved that it be stricken out. Thereupon the court asked witness if there was any signature of the customer on the cards, to which the witness answered "there is," and that he saw him write it, and thereupon the court overruled the said objection, to which action defendant prayed an exception, which was allowed. Thereupon the witness said: "The signature on each of the cards after the printed word 'signature' was written in his presence by Mr. Z. S. Wan." Thereupon the said cards were offered in evidence and were objected to by defendant, which objection the court overruled, to which action the defendant prayed an exception, which was allowed. Thereupon Diehl No. 1 was read to the jury, as follows: "Name, Z. S. Wan. Address, 313 W. 112th Street. Signature, Z. S. Wan. Introduced by F. H. Chen. Date, July 10, 1918."

Thereupon Diehl No. 2 was read to the jury, being the same as Diehl No. 1, except for the following addition: "Business: Student (Columbia)." Thereupon a paper mark, "Diehl No. 3," was shown to the witness, who was asked in whose handwriting it is, to which question the defendant objected, which objection was overruled by the court, to which action of the court defendant prayed an excep-



tion, which was allowed. The witness said: "It is in his handwriting, except the words in pencil on the left-hand side," and being asked what the paper represents, the question objected to by defendant, which objection was overruled, to which action of the court defendant prayed an exception, which was allowed. The witness stated, "It is a deposit slip showing the deposit made on July 10, 1918, by Z. S. Wan, for a total of \$2,000," and being asked what it represents or indicates with respect to the account, the question was objected to by defendant, objection overruled, to which action defendant prayed an exception, which was allowed. The witness said: "It indicates it is a new account on the books, a first deposit in his name," and thereupon defendant moved that the answer go out, which motion was overruled, to which action the defendant prayed exception, which was allowed. Being asked in whose handwriting were the words. "The International Bk. Co.," witness said, "That is the marking of our receiving teller, indicating that we"—and thereupon counsel for defendant objected; witness said he knew the handwriting, and the objection was overruled by the court, to which action the defendant prayed an exception, which was allowed. Witness stated he had a slight recollection of the account; cannot recall any direct conversation with the man who made the deposit or opened the account, just the usual conversation; being asked what constituted the deposit on that occasion, defendant objected on the ground that the slip should speak for itself, which objection was overruled, to which action defendant prayed an exception, which was allowed, and the witness answered, "Merely from the deposit [fol. 26] slips"; that there were two slips, one for \$800.00 and one for \$1,200.00 upon the International Banking Corporation. Witness does not think he could recognize the man that made the deposit. Thereupon, over objection of the defendant, which was overruled by the court, to which action of the court defendant prayed an exception, which was allowed, the witness stated that "Diehl Exhibit No. 5" is the bank's original ledger sheet showing the transactions for that account; that the account was last balanced October 31, 1919; that on January 22, 1919, the balance to the credit of Mr. Wan was shown by said sheet to be \$41.07, and the account had been opened on July 10, 1918, by a deposit of \$2,000, to all of which testimony defendant objected and moved that it be stricken out, which objection and motion were overruled by the court, to which action the defendant prayed exceptions, which were allowed. Thereupon the witness, over the objection of the defendant, which was overruled and exceptions allowed, testified that "Diehl No. 6" check bore the bank's endorsement and passed through witness's bank; looking at the check he could state it was either cashed or deposited on January 17, 1919, could not say which, and, being asked if he is familiar with the signature on the back of it, to which question the defendant objected, which objection was overruled, and an exception prayed and allowed, witness stated he knew the signature, and that it is the signature of Z. S. Wan, whose name is on the card. Thereupon the witness was shown a paper marked "Diehl Exhibit No. 7," and stated that he produced it from the records of

his bank; was familiar with the signature on it; and being asked whose signature it is, the defendant objected, which objection was overruled, to which action defendant prayed an exception, which was allowed, and thereupon the said paper was offered in evidence for the purpose of identification of the handwriting only, and the defendant objected to the admission of the paper in evidence, which objection was overruled, to which action the defendant prayed an exception, which was allowed. Thereupon, over the objection and exception of the defendant, the witness said, "The signature on the paper is that of Z. S. Wan." The paper was offered in evidence for the purpose of comparison as to the signature only.

Thereupon, ISRAEL WEINBERG, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that his address is 510 Central Avenue, Far Rockaway, New York; that he knows Z. S. Wan, whom he points out as the defendant; that last November a year ago, he thinks, does not exactly know the time, in Brooklyn, he had a business transaction with the defendant. He is shown a paper and the following occurred:

"Mr. Laskey: Mr. O'Shea, we are not claiming that the terms of the lease are material, but the fact that the lease was made and the price paid and the passing of the money is material.

"Mr. O'Shea: We object to that; you had better submit it to his honor.

"The Court: I take it that this—that you mean by this that it is the lease to the moving-picture show, and that was the date?

"Mr. Laws: The date of the signature.

"The Court: The objection is overruled."

[fol. 27] To which action the defendant prayed an exception, which was allowed.

Thereupon the witness said he was familiar with the paper and the signature at the top was his; that the signature pointed out to him was that of Mr. Wan; and he also identified his own and the signature of Mr. Wan at another place on the paper. Counsel for the United States said: "And that fixes the date as of the 9th day of September, 1918, when the signature was made. Was there any money paid to you at that time?" To which question defendant objected, which objection was overruled, to which action defendant prayed an exception, which was allowed, and the witness answered, "Yes"; asked how much, the witness replied \$1,000; and over the exception of the defendant the witness said he had a conversation with the defendant on September 9, 1918, in Brooklyn, about the money, that they just arranged it, and he paid the money at the time witness gave him the lease, which is the paper above referred to; that he was to pay \$1,500.00, and the \$500.00 he was to pay the first of May, a couple of months after; and being asked if he said anything about what bank he would get the money from, defendant objected, the court said he would sustain the objection



unless it is absolutely material, and counsel for the United States said, "It is a very material thing to prove by this witness that he got it from the United States Mortgage and Trust Company, whether it is the same bank in which he had that account," and thereupon the defendant objected to the statement so made before the jury as to the bank, which objection was overruled, and an exception prayed and allowed, and the witness answered, over the objection and exception of the defendant, that he said it was on 125th Street, witness was not sure where, though, that at the time they were entering into these negotiations about the moving-picture house, witness thinks his friend or brother was present, and identifies Mr. Van as the man who was with the defendant.

Upon cross-examination the witness testified that his recollection is the lease was signed the 9th of September; that it was the date when it was signed that the money was paid by Wan in cash, witness is sure of it.

Thereupon ISAAC TOPP, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he resides in Brooklyn, knows Mr. Weinberg and Z. S. Wan, whom he identifies as the defendant; and being asked if he ever had any transaction with him, the defendant objected to the question and any testimony along that line, which objection was overruled, to which action the defendant prayed an exception, which was allowed, and witness answered that he had; that in September, 1918, Wan bought a lease of Mr. Weinberg for a moving picture that witness took care of. Witness had a second mortgage on the building; saw the defendant in November, 1918, at the latter's house; being asked if he had any conversation with the defendant, defendant objected to the question, which objection was overruled, to which action the defendant prayed an exception, which was allowed, and witness said he thinks it was somewhere on 112th Street, about the middle part or 20th of September or November, 1918. The place was closed and Wan at that time owed \$200. Witness asked him why he did not pay the rent, and he said he had no money, to which testimony the [fol. 28] defendant objected and moved that it be stricken out on the ground that it was too remote, which objection was overruled, to which action the defendant prayed an exception, which was allowed, and witness stated he asked him why he didn't have any money, and he said he had bought this place from Mr. Weinberg, who had proposed to learn him the business, but as soon as he got the money he didn't learn him the business; that he, Wan, did not know much about the business and had to close it up; was trying to sell it, had advertised it for sale, and if he sold it would pay witness two months' rent, but witness would have to assign the lease over, and he requested permission to keep it until he could do that, and witness said he could not, cold weather was coming on, steam pipes would burst, witness would be a loser and Wan would have nothing out of it, and suggested he go to his lawyer; he did so, and his lawyer asked if he had a customer for it and witness said he could

not help him, could not lose anything; that Wan might lock it and give witness the key and he would not rent it for a couple of weeks and if Wan had a customer would let him in and assign the lease to him; went down and gave witness the key; witness has never seen him since. Wan never paid the rent. Being asked if Wan said anything, in the conversation at the house about where he was working, defendant objected to the question as leading, which objection was overruled and an exception prayed and allowed. Witness answered, over the objection and exception of defendant that Wan said he was not working, did not have a job, and was looking for work.

On cross-examination the witness testified that he was interested in the moving-picture place as part owner, that he had a second mortgage on the place; the owner was a certain Mrs. Bernstein; Weinberg had a lease on the building, and he came to witness and asked to be permitted to assign the lease to Mr. Wan; witness thinks the lease was assigned; Wan was to pay witness the rent, but there was no agreement between witness and Wan to that effect; no rent was paid to witness by the defendant, was never any agreement between witness and the defendant; when they assigned the lease to Mr. Wan, it was agreed that the rent should be either mailed or brought to the lawyer's office; does not know whether the agreement was in writing; defendant promised to send the rent to the house; thereupon counsel for the defendant moved that all the witness's testimony in respect to the condition of the defendant and the alleged conversation he had with him about the 20th or middle of November, 1918, be stricken out. This motion was denied by the court, to which action defendant prayed an exception, which was allowed.

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Thereupon CHARLES D. RATCLIFFE, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is vice president of the Munsey Trust Company, and was so employed in January, 1919; that he knew Mr. B. S. Wu, of the Chinese Educational Mission, as a depositor in the bank; that he is acquainted with his signature; produced a card marked "Ratcliffe No. 1," reading as follows: "Signature authorized to the Munsey Trust Company, Washington, D. C. Name, B. S. Wu; address, 2023 Kalorama Road; business, Chinese Educational Mission; introduced [fol. 29] by T. T. Wong; date, April 25, 1916," and being asked if Mr. B. S. Wu's signature is on the back of the card, defendant objected on the ground that it had not been shown whether he was familiar with the signature, and thereupon the witness said he had never seen Mr. Wu write, but had paid checks signed by him, and in the course of banking business paid checks purporting to be signed by Mr. Wu, to be charged to his account, without any objection being made by him, for a period witness should say of a year and a half; and being again asked as to the signature on the card, defendant objected, on the ground that he did not see the man

sign the card, and only claims to know the signature by the fact of checks going through his bank; and the witness then said he knew Mr. Wu personally and knew personally that he had an account there; and thereupon the court overruled the objection, to which action the defendant prayed and was allowed an exception; and the witness said he could not say it was Mr. Wu's signature; being shown certain canceled checks and asked if he recognized the signature, witness said, over the same objection and exception, that it was Mr. Wu's signature on the checks; has seen his signature on a number of occasions; does not recall that he ever saw him write; would not say absolutely that it was Wu's signature on the signature card; and being asked if he had cashed any checks with Mr. Wu's signature, which question was objected to as leading and objection overruled, and an exception prayed and allowed, he said he cashed checks for Mr. Wu when he presented them himself, and each of six checks were thereupon marked for identification, "Ratliffe No. 2," one of which said checks was a check on the Munsey Trust Company dated Jan. 13, 1919, payable to the order of Z. S. Wan, for the sum of \$50, purporting to be signed "B. S. Wu" and bearing the indorsement "Z. S. Wan," being the same *same* check therefore identified by witness Diehl, "Diehl No. 6," as having been either cashed or deposited in the United States Mortgage & Trust Company in New York; and a paper which was marked "Ratliffe No. 3," purporting to show the balances Mr. Wu had in the Munsey Trust Company during the month of January, 1919, was, over the objection and exception of defendant, identified by witness, who stated that it showed a balance of \$615.27 as of January 31, 1919; the paper exhibited to witness represents a statement of Wu's account sent him on the last of January; witness has the original ledger sheets of the bank showing his account, is familiar with some of the handwriting on them; they were made in the usual course of business and show a balance of \$615.27 on January 31, 1919; all of which testimony was admitted over the objection of the defendant, which objection was overruled, and exception prayed and allowed. Witness identified paper marked "Ratliffe No. 8," and the signature of B. S. Wu thereon, said Ratliffe No. 8 being as follows:

No. 41. Washington, D. C., Jan. 27, 1919. The Munsey Trust Company, 15-81. Fifteenth and H Streets, N. W. Pay to the order of Z. S. Wan—\$30.00—Thirty dollars only—Dollars. B. S. Wu.

Thereupon the United States offered in evidence the check identified by Mr. Ratliffe as Ratliffe No. 2, dated January 13, 1919, and identified by Mr. Diehl, "Diehl No. 6," as having been either cashed or deposited in New York, being the afore-mentioned check payable [fol. 30] to Z. S. Wan, and purporting to be signed by B. S. Wu, to which the defendant objected, which objection was overruled, and an exception prayed and allowed, and the check referred to was exhibited to the jury.

On cross-examination the witness testified that in January, 1919, he was paying teller and assistant treasurer; did no bookkeeping; the mailing of statements to depositors came under his supervision; his duty to see that they were sent out; has no recollection of any particular statement that was sent out to Mr. Wu; it was custom of bank to send out monthly statements to each customer; can not say that he ever saw Mr. Wu actually write; his best recollection is he did not see him write; has passed on his signature more than once; knows the signature because he waited on him; knew a signature that was presented by Mr. Wu, which is the basis of his statement that it was Mr. Wu's signature, and has a signature card to go by, but can not say that the signature on the signature card is that of Mr. Wu; can not say that it is the same signature of this Mr. Wu of whom witness has made mention, and for the reason that he was introduced by Dr. Wong, as shown by the card; it is the only signature of a Mr. Wu that witness could locate in the bank; cannot say now whether there is another Mr. Wu or not; did not see Mr. Wu make out this card, and has no independent recollection of his ever having made the signature; does not think he referred to the card; simply based his knowledge of the signature on the strength of Mr. Wu presenting the check and knowing him, and that is all. The card shows Mr. Wu was introduced by Doctor Wong. Thereupon, upon motion of counsel for the defendant, the witness's statement as to what the signature card shows was stricken out.

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Thereupon Mr. KANG LI, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that in January, 1919, he lived at 2041 Kalorama Road N. W., Washington, D. C., that the Chinese Mission at that time was located at 2023 Kalorama Road, to which testimony as to the location of the mission defendant objected and moved that it be stricken out, which objection was overruled, exceptions to that action prayed and allowed by the court; that the mission was just across the street from where witness was staying; he was a student at the mission; witness has been under the supervision of the mission since 1914, acquainted with the officers since 1915, and has been in the mission house. Its officers were, Theodore T. Wong, director; C. H. Hsie, secretary and treasurer; and B. S. Wu, secretary and clerk. Witness knew Z. S. Wan; identifies him as the defendant; first saw him in January, 1919, the Friday previous to the 29th, that is, the 24th, in the morning, in the mission house, second floor front room; is familiar with the arrangement of the rooms; stayed in the mission house for a week about a week previous to January 24th; cannot say exactly. In the basement in the back was a kitchen house, and facing the street was the furnace room; three rooms on the first floor, in front, the parlor hall, next the reception hall, then the dining hall, which Dr. Wong used as an office; front room on the second floor was the sitting room, then a bedroom occupied on January 24th by the defendant; back of that [fol. 31] Mr. Hsei's office; bath room back of the bedroom; on the top floor in front, T. T. Wong's bedroom; then the room occupied by Wu, then that occupied by Hsei, and besides these, a bathroom.

Friday, the 24th, the first time witness saw Wan in Washington; saw him the following Sunday in his room, and he walked from his own room to the front room, the sitting room on the second floor; last saw him in Washington seven o'clock, Wednesday, the 29th; being asked, "State what occurred at that time," the witness said, "I don't know anything." Fixes the time because class finished at 5 o'clock, takes witness 30 minutes, or 26 minutes, from the school to his house, then he took supper, opened his mail, and then, noticing one letter which was to be presented to Mr. B. S. Wu for a consultation over something, brought this letter over to the mission and tried to find Mr. Wu; rang the bell and waited a little while; noticed a light in the front hall near the door; that was the only thing he took a particle of notice of; waited a little while and then looked into house; saw a hat and a scarf on the rack which witness could identify as belonging to Mr. Wan; Mr. Wan came to the door; thereupon the witness stated: "I asked, 'Is Mr. Wu at home?' He said, 'He has gone out.' I asked then, 'Is Dr. T. T. Wong home,' and he said, 'He has gone out,' and I asked him if he were going out, and he said, 'After a while,' and at that time he showed me a rather cool attitude," to which statement of the witness as to defendant's attitude counsel for defendant objected as calling for an opinion and as being a voluntary statement of the witness, and upon the court's stating that he would let the question be asked, and the witness being asked what his demeanor was at the time, counsel for the defendant objected as calling for the opinion of the witness, which objection was overruled, to which action of the court an exception was prayed and allowed, and the witness said he showed him a cool attitude. The door was open not more than a foot, and that made witness turn his back and run off; "that evening I went back home and I thought it over"—the witness being stopped by counsel at that point; that he left the house having had only the above conversation with the defendant. Thereupon the witness was excused, with permission to recall him upon an entirely disconnected line of examination. Before excusing the witness the court asked counsel for defendant if he wished to cross-examine witness then or wait until the witness was recalled; counsel for defendant stated he would prefer to wait until the witness was recalled, and permission was given the defendant to reserve his cross-examination until his recall.

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Thereupon, MORGAN PRIGG, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that in January, 1919, he was clerk at the Hotel Harris. Witness produced the hotel register and, turning to the entries on January 27, 1919, pointed out the signature of Z. S. Wan therein, and the figures of witness showing Wan was assigned to room 431; witness thinks between 10.30 and 11 a. m. when this occurred. He did not see him until Thursday, the 30th, between 12 and one o'clock noon day, when he checked out. When he checked out, he had another Chinaman with him, who, defendant said, was in the capacity of a nurse.

[fol. 32] Thereupon, ROBERT WILLIAM MILES, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that in January, 1919, he was bell boy at the Hotel Harris, Washington, D. C., and on a Monday took defendant to room 431, and about 15 minutes later took a telegram for him to the Union Station; was present when Wan wrote the telegram; saw him the next morning about 9 o'clock, and about 12.30 or one o'clock on Tuesday took another telegram for him to Union Station. Witness stated he read both telegrams and he identified two telegrams exhibited to him by counsel for the Government as the ones he took to the station. Saw Mr. Van at the hotel Wednesday morning about 9 or 10 o'clock, and about 12.30 or 1 witness saw Van and defendant go out; Van had a small hand bag in his hand—the one exhibited to witness looks very much like it; witness went to defendant's room three or four times a day; when he first came, witness ordered a meal for him; when witness saw Van in the room on Wednesday, about 9 or 10 o'clock, defendant was in bed.

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JAMES T. BRESNAHAN was called as a witness for the United States and testified he was assistant manager of the Western Union Telegraph Company, and, being shown the telegrams, identified by witness Miles, testified he produced them from the files of the Western Union Telegraph Company in obedience to a subpoena.

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Thereupon, JOHN A. CALLAHAN, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that the first telegram testified to by the witness Miles was filed at the Western Union Telegraph Office at the Union Station, January 27, 1919, at 12.06 p. m.

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Thereupon FLORENCE WATERS, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that the second telegram testified to by witness Miles was filed January 28, 1919, at 2.16 p. m., with the Western Union Telegraph Company.

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Thereupon HARRY A. JEFFERS, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he knew Mr. B. S. Wu, of the Chinese Educational Mission; that on a Wednesday in January, about three days before he read in the paper that he had been killed, he saw him at the Oriental Restaurant, where witness went to keep an appointment with Mr. J. Usang Li; noticed Mr. Li sitting at the table with Mr. Wu and Mr. Chu; they left the restaurant at ten minutes to eight, and Mr. Li and witness parted with Mr. Wu and Mr. Chu at F Street, and saw them between F and G Streets, on the way up 14th Street, and witness and Mr. Li went to Dupont Bank, where they were employed, and afterwards they parted at 13th and F Streets at 11.15.



Thereupon, Mr. Y. C. YANG, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that in January, 1919, he was an employee of the Chinese Legation, and on Wednesday evening, January 29th, 1919, witness and others, including Mr. Theodore Wong and Mr. Hsie, had dinner together at the Nankin Cafe, which they left about 10 o'clock, and witness and Mr. Hsie took a Mt. Pleasant car at 9th and F Streets, got off at Columbia Road and 19th, and Mr. Hsie, in response to witness' question whether he would go with him to the legation for a talk, [fol. 33] waved his hand and said he was busy that evening, and turned to the left and went back.

On cross-examination the witness stated there were thirteen at the dinner; witness and Mr. Hsie were the first to leave; would say he got off at Columbia Road about 10.20, three blocks from the educational mission.

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Thereupon, LINGOH WANG, a witness on behalf of the United States, being first duly sworn, gave testimony tendering to prove that he is now, and in January of 1919 he was, second secretary of the Chinese Legation; remembers seeing Dr. Theodore T. Wong and Mr. C. H. Hsie, January 29, 1919, in the Nankin Restaurant, and Dr. Wong left a few minutes after 10, in company with the host, Mr. Quo, Mrs. Quo, her sister, Miss Hsu, and witness, all of whom took the Mt. Pleasant car at 9th and F Sts., got off at S and Connecticut Avenue, walked to the Cordova Apartment at 20th Street and Florida Avenue, where they parted at about 10.30 or 10.35.

On cross-examination the witness said there were thirteen at the dinner party; the party was arranged by Mr. Quo, who was passing through on his way to Paris; his private dinner; they had the whole second floor by special arrangement; they parted about eight blocks from 2023 Kalorama Road, Dr. Wong walking away alone. Mr. Quo had been entertained several times and was going to Paris as technical adviser to the Chinese peace delegation; had come from China. Y. C. Yang and C. H. Hsie left the restaurant a few minutes earlier.

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Thereupon, ROBERT LEE CARTER, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that in January, 1919, he was employed at the Harris Hotel, running the elevator, and took the defendant to room 431, about 12.45, near one o'clock on a Wednesday night, if he mistakes not; being asked if he spoke to any one that night about it, counsel for the defendant objected. Counsel for the Government stated he wished only the answer yes or no. The court ruled the witness might answer yes or no, to which action of the court defendant prayed an exception, which was allowed, and witness said he spoke to Mr. Spohn, defendant's brother or some one, a Chinaman, was with him that night; saw them go into room 431.

On cross-examination the witness said he might be mistaken about

the night being Wednesday; that that night room 431 rang and witness brought them hot water; fixes the time around 12.45 that he saw defendant because it was about time for the Southern train to come up; Southern train is often late; can not tell when he got the first call for hot water, because the house was filled and witness very busy; defendant was in bed when witness brought the hot water; quite a while later brought hot water again. When witness carried them up Mr. Spohn, the night clerk, asked him who they were and he told him they were two Chinamen that belonged in room 431; did not look at the clock, simply guessing it was about 12.45 to the best of his knowledge. Later the police took witness in an automobile up to a place near the Treasury, to identify the defendant's brother, which witness could not do. Witness had no watch and does not recall looking at the clock for anything special on the night he went to defendant's room; when says it was 12.45 simply guessing at it to the best of his knowledge; has seen the defendant but twice. The first time witness went to the room defendant was in bed and had his face toward the wall; did not see his face; the next time witness saw his face; witness carried his brother up as a doctor and when took hot water up he opened the door; on the night when witness says saw him about 12.45, cannot say how he was dressed; knows there were two Chinamen and that is all; knows the defendant's brother now because witness asked, saw him coming in and out at the trial and being unable to identify him asked who it was; witness could not identify Van when Mr. Pullman took him up to identify Van; would not know Mr. Pullman now and could not make out the brother; witness made a statement to some one later which was printed in the Washington Times; did not save the clipping, because he did not think it was going to amount to anything; thought that was the end of it, but the statement was a correct statement; did not make a statement, "whenever I went to the room with hot water either Wan was in bed or somewhere where I could not see him."

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Thereupon, GEORGE SPOHN, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that in January, 1919, he was night clerk at the Hotel Harris, and on January 30th, at 12.45 a. m., he saw two Chinamen come in; they were waiting for the elevator to come down, with their backs toward witness; when the elevator came down they entered and went up. Witness says he knows it was January 30th, but cannot tell how he fixes it as that date.

On cross-examination the witness said a great many coming and going that night; that the elevator was a couple of feet from staircase, which is in full view.

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Thereupon, HENRY T. HALLEY, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that



in January, 1919, he was chauffeur for the Terminal Taxicab Company, and on the morning of January 30th remembers taking two customers to the Riggs Bank and bringing them back to the station; believes he could identify the men; thinks he sees one of them in the court room (indicating the defendant); identifies Van as the other one; they both got in car together and Van told witness to take him to 15th and Pennsylvania Avenue; got in the car outside station a little after nine a. m. Wanted to go to "bank;" witness judged meant the Riggs Bank and parked his car in front of the American Securities and Trust Company; Van got out; had a very small suit case with him; the other one remained in the car; Van did not seem to know exactly the entrance to the bank and witness got out and showed him the entrance to Riggs Bank, and he went in and stayed some time, about a half to three-quarters of an hour; when he came out, got in car and told witness to take him to the station; they stopped the car on the south side of Massachusetts Avenue and the smaller one paid me, something like \$2.20.

Thereupon, on cross-examination, witness said that they both came up to his car, but the younger one did the talking; thinks he had derby hat on, is not certain how he was dressed; the other one had eye-glasses on; that is all he knows; he was taller; does not know what kind of clothes he had on; witness was sitting in front and defendant sat behind him; has never seen either of these two China-[fol. 35] men since that day, personally, and the only thing that impressed was there was a difference in the appearance of the two men at the time; one was sitting in the car for some time and the other one was considerably shorter; does not remember anything about his clothes. Witness feels certain these were the two men because at the time he remembered them very distinctly; asked if it was possible he was mistaken, witness replied he did not think so. Witness has not seen either of them since that time. Can not tell whom he carried on January 27th. Being asked if he carried any Chinamen on January 27th, witness does not answer; can not tell whom he carried on January 28th or January 29th; being asked if he can tell whom he carried last week, says might if any particular case came up where could jog his memory; being asked if he had to jog his memory about this case, says first time he thought about case was after he read in the paper that two of them had come up there, and then the fact that witness had taken them to Riggs Bank and brought them back to the station. Witness read in the paper that there was two Chinamen under suspicion, and thought then witness must have had those two. Being asked, "But you are not sure," witness replied he is sure now; gave a statement to the district attorney's office the second day of the present month (the day on which he testified being December 16, 1919); when witness read in the paper after the confession, after the fact was made known in the paper that they had hired a cab at the station, it is impressed on his mind that he had carried them; he made mention of it at the Union Station, but asked the man to whom he spoke not to say anything about it because witness did not wish to be mixed up in it.

On redirect examination the witness said that the published state-

ment that the Chinamen had driven to the bank in a cab fixed it on his mind that he had been the one that carried them.

On recross-examination the witness said that he was not sure he had carried them until he saw the pictures; was not sure at all, you might say, until he saw the men; saw the defendant's picture in the paper; was shown picture of defendant and his brother, Van, by the district attorney, to see if witness could identify them, on December 2nd, at which time he identified the younger man (Van); had identified Wan previously; was shown Wan's picture several months ago.

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Thereupon, BENNETT G. DENT, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he was, in January, 1919, paying teller of the Riggs National Bank; now is foreign exchange teller; that on the morning of Thursday, January 30, 1919, Mr. Van presented a check to witness at the paying teller's window in said bank, accompanied by a letter; check was for \$5,000. Thereupon, counsel for defendant objected to any testimony in regard to the check as being irrelevant, has no connection with the defendant, and is a collateral matter, which objection was overruled, to which action of the court defendant prayed an exception, which was allowed. Thereupon, counsel for defendant moved that the statement of witness as to the contents of the check be stricken out on the ground that he should not be allowed to testify to the contents of a written instrument. Thereupon, counsel for the United States said he would prove that the check was given back to Van and that the defendant stated it was destroyed. The court [fol. 36] said he would admit proof of contents now upon the offer of the United States to establish later that the check could not be produced and permit the defendant an exception at this time if the check and proof were not connected up. Thereupon the witness stated that Mr. Van presented the check of the Chinese Educational Mission purported to be signed by Mr. C. H. Hsie and Dr. Wong, for \$5,000, payable to bearer, and a letter supposed to be signed by the same parties, on the stationery of the Chinese Educational Mission, requesting that the bank pay the amount of the check to the bearer. The appearance of the check was unfamiliar that is, there was something strange about it, and witness showed it to Mr. Taylor, paying teller at the bank, and he agreed with witness. Thereupon counsel for the defendant moved that "and he agreed with witness" be stricken out, which motion was denied, to which action of the court defendant prayed and was allowed an exception. Thereupon the witness stated that the Chinese Educational Mission had two forms of checks printed, witness is familiar with both forms; a check book, marked for identification, "Dent No. 1," was shown witness and he identified the blank checks therein as one of the printed forms of the mission and stated it was the form used for the check presented by Van; witness spent about five minutes attempting to get the mission on the phone, could get no answer; he then procured one of the checks of the mission which "we had paid," purporting to

have on it the signatures of Mr. Hsie and Dr. Wong, with which he compared the \$5,000 check. Thereupon, defendant moved that the witness's testimony as — what other checks had on them, and that he compared the check with the other check, be stricken out on the ground that he does not produce the checks from which he made the comparison, which objection was overruled, to which action of the court the defendant prayed and was allowed an exception; witness testified that on making the comparison the signatures on the check presented were irregular, and after showing the check to Mr. Taylor, witness took it to Mr. Vass, assistant cashier, and after some conversation with Mr. Vass, left the two checks and the letter with him and went back to the window, to ask the gentleman who presented the check to go back and speak to one of the officers, and the gentleman pushed a card over the window and said something of which witness remembers only two words, "Wu, secretary." The card was Mr. Wu's card, and witness pushed it back to him and he carried it back to Mr. Vass. Witness is familiar with the handwriting on the cancelled checks with which he compared the check, and being asked whose signatures they bore, counsel for defendant objected, which objection the court overruled, to which action the defendant prayed and was allowed an exception, and witness answered that it bore the signatures of Mr. Hsie and Dr. Wong; the witness being asked to explain wherein the signatures on the check presented differed from the signatures on the checks used in comparison, counsel for defendant objected on the grounds, first, that it had not been shown that the witness is an expert in such matters, and that the check used in comparison was not before the court, not shown to have been signed by Dr. Wong and Mr. Hsie, and, thirdly, there was no showing of the conditions under which the alleged checks from which he made the comparison were written. Thereupon, in answer to questions by the court, the witness said he was familiar [fol. 37] with the signatures on the checks of the Chinese Educational Mission, knew the signatures of Mr. Hsie and Dr. Wong; that they had an account at witness's bank for some time, he handled the checks, paid them, and credited their accounts and charged their accounts, no objection made to them, and it was one of these paid checks that he used to compare the signatures on the check presented by the young man who came to the window; that the signatures on the latter checks were irregular. Being questioned by counsel for the defendant, witness said he had never seen Dr. Wong or Mr. Hsie write a check. Thereupon the court overruled the objection, to which action the defendant prayed an exception which was allowed; witness then stated that the signatures on the check the man gave him were heavier than on the check with which he compared them; more studied; in fact, they were studied signatures. Thereupon witness was shown a check book which had been marked for identification "Dent No. 1," and was asked if he recognized the handwriting on the stubs numbered 1 to 23, inclusive, which he said he did, and being asked whose handwriting was on the stubs, the witness answered, over objection and exception of the defendant, "I recognize it as the handwriting on the checks which I have paid." "Does

not know who wrote them. Thereupon his testimony as to the handwriting on the stubs was stricken out. Being shown a card, and asked whether he had seen such a card, witness said he had, one exactly like it, presented by the gentleman who presented the check. Thereupon the card was marked "Dent No. 2" for identification.

Thereupon the following occurred:

"By Mr. Laws:

"Q. I will ask you to state whether or not you recognize having seen such card?

"A. Yes, sir.

"Mr. O'Shea: This card, you mean, Mr. Laws?

"Mr. Laws: Yes.

"The Witness: Yes.

"Mr. O'Shea: I object to 'such a card.'

"The Court: Well, I suppose it is a card that Mr. Van presented, is it not?

"The Witness: Yes.

"Mr. O'Shea: He said he handed it back to him.

"Mr. Laws: No; he did not.

"Mr. O'Shea: Yes; he did; and that Van took it in to Mr. Vass.

"The Court: If it is that card, it is admissible.

"Mr. O'Shea: If he knows that it is that card.

"The Witness: I can say it was one exactly like it.

"Mr. O'Shea: I move that it goes out.

"Mr. Laws: That is competent, if the court please.

"The Court: Sure.

"Mr. O'Shea: Not unless it is the same card.

"Mr. Laskey: That is a link in the chain. We can not prove everything at once.

"Mr. Law: I asked him if this was such a card, and he said yes.

"The Court: Any objection to that?

"Mr. O'Shea: Yes.

[fol. 38] "The Court: Overruled.

"Mr. O'Shea: We believe that 'such a card' is not admissible.

"The Court: Overruled."

On cross-examination the witness said that on the morning of January 30th he first saw Mr. Van between 9.30 and 10 o'clock; he presented an envelope to witness; does not remember that the check was in the envelope, but there was an envelope, knows the letter was in it; does not remember whether the check was. Mr. Van walked back in the lobby and sat down at Mr. Vass's desk. "We want to be sure about every check we pay; the larger the check the more important it becomes." Gave the letter and check to Mr. Vass; gave the card back to the gentleman; as a matter of fact, never picked the card up; witness simply pushed it back to him. Witness's recollection is the check was payable to bearer; all witness can say now about the check as compared with the one with which he compared it is that the writing was a little heavy, more studied.

Thereupon, GEORGE O. VASS, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that in January, 1919, he was assistant cashier of the Riggs National Bank, and on January 30th he first saw Mr. Van, whom he identifies in court, about 9.30 or 20 minutes to 10 a m., when Mr. Dent came back to witness and gave him the check and a letter; the check was a check drawn on the check of the Chinese Educational Mission, which latter statement the defendant moved be stricken out, which motion was denied, and the defendant allowed an exception; check and letter bore the signature, or purported to be signed by Wong, the director, and Hsie, the secretary, and the letter was on the letterhead of the Chinese Educational Mission and also purported to be signed by the director and the secretary; witness is not familiar with the account, did not know the signature, says he had a paid check to compare them with. Mr. Dent left the check and letter with witness and brought Mr. Van back; he came through the door, which closed behind him when he came inside, and took his seat while witness examined the papers; witness stalled around for time because he did not know whether it was a genuine check or not, and did not want to make a mistake, wanted to investigate and wait until he could find somebody who did know whether it was a good check or not; between five and ten minutes later Mr. Fleming, assistant cashier of the bank, came in; Van was there all the time, sitting at witness's desk; witness went next door to bank annex; Van suggested that witness call up mission; witness said he was not familiar with the members of the mission, would not recognize their voices, and was waiting for someone who could do so, and when Mr. Fleming came in, handed the whole matter to him; when witness came back from the bookkeeping department Mr. Van handed him a card similar to the card marked for identification "Dent No. 2"; does not recall that he said it was his card, or made any statement; witness later gave it to Detective Wilson of the police force, or to Mr. Ailes; Mr. Ailes and witness were together and Mr. Ailes made the memorandum on the envelope; thinks Mr. Ailes took the card and put it in the envelope and handed it to Detective Wilson in witness's presence. Witness went to New York the following Sunday with Detective Kelly; on Monday—the next morning—went in the house [fol. 39] on West 112th Street with Kelly and the New York detective. Witness remained outside, because they were going to bring this man back voluntarily if they could. The three men came out on the street together and witness identified Van. Witness had never seen the defendant until the Saturday evening before the Sunday they went to New York, when he saw him in some building down on 15th Street about 7 o'clock p. m.; did not identify him, having never seen him before to his knowledge.

On cross-examination, witness said he is not familiar with T. T. Wong's or C. H. Hsie's signature; does not recall the number of the check presented at the bank, or whether it was numbered; probably had the check and letter in his hands about ten minutes; after handing the papers to Mr. Fleming, washed his hands of the case and gave it no further thought; the letter was addressed to the

Riggs National Bank, about two typewritten lines, with perhaps a third line about a quarter of the way across the page, with the two signatures about as they would be on a check; not familiar enough with them to say whether they were in a different handwriting or not; they were different names; as witness recalls it, the letter was substantially, "Please pay to bearer the amount of enclosed check." Was told that defendant was to arrive in Washington Saturday evening about 5.20, and witness was asked to come down to see him about 7.30. "We went in one at a time and looked at him, to see if this man was the man that came into the bank, and after that proceeding was over Van was brought up to the Dewey Hotel." Simply went in and looked at Van; asked no questions and engaged in no conversation; possibly four detectives there, Major Pullman, and Detectives Kelly, Grant, and Burlingame.

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Thereupon, ROBERT A. SANDERS, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is a member of the Metropolitan police force, at detective headquarters; in January, 1919, remembers seeing Mr. Vass and Mr. Ailes at the Riggs Bank in company with Officer Wilson, now dead, and being asked what occurred on that occasion, counsel for the defendant objected on the ground that it is not shown that defendant and his brother were present, and the district attorney stated that it was to connect up the card turned over to Wilson; the court overruled the objection, to which action of the court defendant prayed an exception, which was allowed, and the witness said he saw Mr. Vass turn over a card in an envelope to Mr. Wilson, and it was taken to Inspector Grant and turned over to him in witness's presence, and the witness being asked if the card identified by Mr. Dent ("Dent No. 2") is that card, was permitted to answer, over the objection and exception of the defendant, that it is. Thereupon counsel for the defendant moved that all the witness's testimony be stricken out, which motion was denied, to which action of the court defendant prayed and was allowed an exception.

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Thereupon, ROBERT G. FLEMING, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is assistant cashier of the Riggs National Bank, and was so employed in January, 1919; is familiar with the account of the Chinese Educational Mission in January 1919; being asked who was authorized to sign checks on that account, counsel for the defendant [fol. 40] objected to the testimony as irrelevant, which objection the court overruled, and allowed the defendant an exception; witness said that two signatures were necessary, Dr. T. T. Wong and C. H. Hsie; witness knew Dr. Wong, but not Hsie; the mission had two printed forms of checks; the bank has some checks of the educational mission, but not with the signatures of these parties, checks with their signatures having been surrendered to the Chinese



Legation, witness thinks it was in the latter part of February, 1919, when this was done. On January 30, 1919, witness saw Mr. Van in the bank about 10.10 a. m., on which occasion Mr. Vass gave witness a check and a letter, and over the same objection as to the testimony with regard to the contents of the check and an exception to its admission, the witness stated the check was for \$5,000, purporting to be signed by Dr. Wong and M. Hsie, was on one of the forms exhibited to witness; witness endeavored to reach the mission on the telephone, and failing to do so, told Mr. Van that it was not any reflection on him, but did not know him and he would have to be identified; the only way he could get the check cashed would be to have Dr. Wong come down and identify him, and he said he would do it; he took the check and letter and left the bank. Witness would say he is fairly familiar with the handwriting of Dr. Wong and Mr. Hsie; never saw either of them write. Being asked had he seen many paid checks that had gone through the bank and charged to their account, answered, "I had seen them off and on, yes, sir; I cannot tell you"; had charge of the account of the mission and no protest ever came because of the cashing of those checks; witness compared the signatures on the \$5,000 check with one of the signatures on one of the cancelled checks of the mission, to which testimony the defendant objected and moved that it be stricken out on the same grounds already mentioned in connection with similar testimony of other witnesses, which objection and motion were overruled and an exception allowed the defendant; and over the same objection and exception the witness said the signature that he noted particularly on the \$5,000 check was the signature of Hsie; in Mr. Hsie's handwriting there was no shading at all and was rather slanting, and the signature on the check, as witness remembers it that morning, was a little bit more up and down and had shading in it, vertical writing; believes he could identify Mr. Hsie's handwriting; witness, being shown a check book marked for identification, "Dent No. 1," and asked if he was familiar with the handwriting on the stubs numbered 1 to 23, inclusive, said he was, and being asked whose handwriting was on the stubs, defendant objected on the ground that it had not been shown that he was familiar with the handwriting, and witness saying his knowledge of the handwriting came in the same way as his knowledge of the handwriting of Dr. Wong, objection was overruled, and defendant allowed an exception; the witness said he believes it is Mr. Hsie's handwriting; hardly thinks he can testify that he knows a thing to be a thing when he really never saw it written; believes it to be his handwriting; is familiar enough to say, in his opinion, the handwriting is that of Mr. Hsie; being asked if he knows whose handwriting is on stub No. 24, witness answered, over the objection and exception of the defendant, that he did not.

[fol. 41] Witness first saw the defendant when he was brought to Washington, Saturday night, about 9.30, below the Avenue on Fifteenth Street; had never seen him before.

On cross-examination witness says he never cashed any of the checks of the mission himself; had seen that form of check, could



not state how many approximately; could not say when he first saw that form of check; was more familiar with the smaller check which was used to send money to students in different parts of the country. Witness received no instructions from the district attorney or police department to hold the checks from which he made the comparison. Checks had been paid and returned as cancelled vouchers time and time again to Dr. Wong and Mr. Hsie and we received no criticism from them that it was not their signatures, which they promptly would have done if it had not been. Witness knew Dr. Wong and knew his voice, but told Van he would not recognize Dr. Wong's voice; does not know personally that Mr. Hsie wrote the check stubs, possibly a clerk in the mission wrote them, but does not believe so, because looks like Mr. Hsie's handwriting; the \$5,000 check was more vertical and shaded in the signature of Mr. Hsie. Saturday evening received a call from Major Pullman to hold self in readiness to identify Chinaman.

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Thereupon, MILDRED E. FUGITT, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that in January, 1919, she was telephone operator at the Riggs National Bank; that she called the number of the Chinese Educational Mission, North 1480, for Mr. Fleming between 9.30 and 10 o'clock; she tried several times, but got no answer.

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Thereupon, JOHN W. GRIFFEN, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that in January, 1919, he was employed as letter carrier; the Chinese Educational Mission at 2023 Kalorama Road was on his delivery route; remembers going there between 8.20 and 9 o'clock on the morning of January 30, 1919; had registered mail; rang the bell several times; no one came to the —; so witness put the mail through a slide in the door for that purpose; he noticed newspapers lying on the steps that morning, and a bottle of milk; also noticed the front side window about half inch up from the bottom. Went back to the house about 12.30 p. m. and 3.15 p. m., did not try to get in, but rung the bell and got no response; found the same condition as on the morning delivery. The front door was usually open, but on this morning it was locked. Went to the house on Friday, January 31, 1919, on the three deliveries and found the same conditions; on Saturday morning did not take the mail there because he knew there was a murder.

On cross-examination the witness said he did not notice the condition of the window on January 29, 1919. He did not try the window at all when he noticed it about half an inch up.

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Thereupon, TSU LI SUN, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he was an attaché of the Chinese Legation at 2001 Nineteenth Street N. W.,

Washington, D. C., and knew Dr. T. T. Wong, Mr. C. H. Hsie, and Mr. Wu; that witness attended George Washington University this year, as did Mr. Wu and Mr. Hsie, who were in the money and [fol. 42] banking class with witness; saw both of them in classroom Tuesday of the last week of January; remembers going to 2023 Kalorama Road the Friday of that week about five o'clock in the afternoon; was taking a walk and just passed the mission house and so went to the door, and saw newspapers and a laundry package before the front door of the mission house; rang the bell and got no answer; waited just a few seconds and went across the street calling on Mr. Kang Li. Called the mission two or three times by 'phone that day. Went back to the mission house that Friday about 6 o'clock, and saw Dr. Wong's body lying on the first floor near the staircase.

On cross-examination the witness said he had known Dr. T. T. Wong since he came to this country, and Mr. Wu since 1915, when witness came to this country. On this Friday evening was just having a walk and thought would call on Mr. Wu at the mission house; was very good friend of Mr. Wu and all of them, and good friend of Kang Li; after went across street to Kang Li's house went back to legation by himself, just went over to tell Kang Li what witness saw at mission house, had noticed a milk bottle, just a newspaper and laundry package. After went back to legation, came back to mission house about 6 o'clock, with Dr. Eh Yuen and Mr. Lingoh Wang and Mr. Lin. When went back to mission house that day in response to a telephone call from Kang Li, rang the bell and door was answered by a policeman. Kang Li's telephone message was that he had got into the mission house and saw somebody lying on the floor, that was all of the message, the entire conversation.

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Thereupon, Mr. KANG LI, a witness on behalf of the United States, being already sworn, gave further testimony tending to show that on Friday evening, January 31st, between five and six o'clock, at the suggestion of Mr. Sun, he went to 2023 Kalorama Road, rang the bell, could not get in; parlor window was a half inch from the bottom of the threshold, lifted up the window and jumped into the house; all dark; saw the mail on the floor in the front hall; flashed a light on front hall and looked around and saw a foot, and immediately opened the door and rushed out; telephoned to the legation and told Mr. Sun something terrible had happened at the mission, and he suggested had better get a policeman, and witness went out and with the help of a newspaper boy, found a police officer; with police officer went to the mission house again, turned up the light, and saw the body of T. T. Wong, covered with an overcoat of Mr. B. S. Wu; after a while, Major Pullman and some police officers came to the house, questioned witness, who sent to his own house in company with Detective Kelly, to find picture of Mr. Hsie and Mr. Wu; police officer came over and they returned to the mission and asked witness to identify two dead men in the basement; they were Mr. B. S. Wue

and Mr. C. H. Hsie; they were head to head; Wu's body was near to the furnace and Hsie's body was near door of kitchen; saw a gun on the desk. Witness went to Mr. Wu's room that night and while in there found a pair of shoes in pretty orderly condition, a coat on a chair and a necktie, and a collar on his bureau, and his room was in orderly condition, and found a book opened at a chapter on government or constitution; identifies book which is marked "Li No. 1" as book he found and identified Wu's signature therein. Witness left [fol. 43] Washington for New York near midnight with Officers Burlingame and Kelly, arriving about 7 a. m. Saturday; they went with a New York police officer to a house on 112th Street; witness and Kelly remained outside for a while, then went in to Mr. Wan's room; defendant was on his bed, sitting up, newspaper spread on the bed, his brother standing beside the bed; we exchanged friendly greetings and shook hands; witness spoke to his brother; Burlingame and Kelly were advising defendant to come to Washington, and witness also advised him to come to Washington; witness told him needed help to clear up this situation; defendant said he was very much shocked at the murder case; was just drafting a telegram of condolence to witness because he knew he was a friend of the mission; said he saw witness Wednesday evening, and was willing to come down, but on account of his bad health, could not; witness said very important to come down, because Wan was just as important as witness to clear up case, and he would be willing to nurse him if he was sick, and he consented to come; dressed up and brother helped him pack his suit case. On the train coming to Washington, defendant sat face to face to witness; they conversed in Chinese mostly; defendant asked if he would be suspected, and witness said, "I saw you last, you might be, and I am just as much suspected, everybody might be suspected that had anything to do with it"; everybody could be suspected as being in the house or anything like that, witness told him, and defendant said, "I could not help in that because if I did I could have killed you that evening, Wednesday \* \* \* I am sure I met you Wednesday evening somewhere, near seven o'clock," and witness said yes; defendant said could it be that Mr. Hsie killed Dr. T. T. Wong and Mr. Wu; witness said he had no reason to believe that; defendant said Wu was his very best friend, expressed great sorrow for his death, that such a man could have been killed that way; arrived in Washington in the evening; automobile waiting; all went to a place and remained there until midnight, almost; defendant still there when the witness left; they questioned him about when he left Washington and took him to the Dewey Hotel; next saw him in the police station quite a few days afterwards; heard his voice the following Saturday night in the Chinese Educational Mission House; witness was in the closet on the second floor; Major Pullman and Inspector Grant took defendant to the second floor front room and asked him a number of questions; witness was in the closet; defendant's brother came into the room; and a day or so after that witness accompanied him to the jail.

On cross-examination witness said from about the 7th or 8th of January until about the 17th he had lived at the mission house;

occupied the middle room, second floor, by himself; same room occupied by defendant when he was a guest at the mission; the front door was usually locked, even during the day; knows that positively. Every time went there had to ring the bell; that is a habit. Thereupon the following occurred:

"Q. You had a key, didn't you?

"A. I handed the key back to Mr. T. T. Wong on that Sunday. That was the 26th. I have got the figure up on the calendar.

"Q. Yes; but you had a key? That is what I wanted to arrive at.

"A. I handed the key back on that Sunday.

[fol. 44] "Q. No. You had a key to the front door, didn't you?

"A. I swear not."

Asked what the key opened, says it was the key to the front door; defendant saw witness hand it back, wants to prove he handed the key back; gave the key back because he was an outsider and did not wish to keep it unless stayed in the house; kept it from the 18th to the 26th, because Dr. Wong wanted witness to come to the house often. Dr. Wong did not say anything to witness about giving up the key on the 26th, but witness thought it was not right to keep it; thought it was all right to keep it from the 18th until the 26th; lacked the occasion before that; during the time he stayed at the mission, became acquainted with the whole house; had been in the house many times before; the mission supplied him funds for education every month; depended upon the mission; was acquainted with Mr. Wu's desk; knew he had a pistol and where he kept it in that desk; knew he had cartridges; saw the pistol; Wu showed him how to use it once; was a little rusty; took some strength to pull the handle; this was a long time before witness stayed at the mission house, almost over a year; did not see it again until detective showed it to witness in the kitchen; warned witness not to handle it then because of fingerprints on it; was laying on the desk, on the table in the kitchen.

On further cross-examination states had two reasons for recognizing the pistol in the kitchen—one because it was somewhat rusty, and later in the detective's office examined it and it was the same way; had to use some strength to pull the handle; that night, by looking at pistol, was able to get some idea of its being Wu's; had pulled the trigger the year before. Was familiar with the signatures of Mr. Wu, Mr. Hsie, and Dr. Wong; had received checks from Dr. Wong; took so much interest in this case because familiar with the mission house; discovered their bodies, each good friend of witness, and because that is his duty to this Government; asked if any other reasons, says has got to think, and then says, because the Government asked him to be a witness, has got to be. Hid in the closet that night when defendant and his brother were taken to the mission house, because Major Pullman asked him to do so; Major Pullman took him around, didn't do anything else; Major Pullman fixed everything and said maybe they would talk in Chinese. Knows a man named K. S. Wang, who was in court the first day. Witness

wrote down in the closet, "third brother;" that is all; was afraid Major Pullman would quiz witness about what was said; was in the closet more than an hour. Witness is friendly towards defendant now; can not say very friendly; not his enemy. They arrived in Washington from New York Saturday about dark, around 7 or 8 o'clock; and in the police office on 15th Street Major Pullman and Inspector Grant began to talk to defendant, and Burlingame and Kelly were there. Mr. Wan was not very healthy; witness was sorry for him and promised to nurse him, but did not speak out that he would do so; about midnight defendant was taken to the Dewey Hotel; witness made the request to go with him and nurse him; "they did not allow me to come in." Major Pullman had asked defendant if he wanted to go to the hospital; defendant said no. At the mission house witness remained in the closet from 9 or 10 o'clock [fol. 45] until about 11, when he left, leaving defendant and his brother there; they were being questioned by Major Pullman; Grant and Burlingame were there. Witness had borrowed small sums of money from Mr. Wu, returned them right away; does not recall any financial trouble with each other; witness never went to the Dewey Hotel to visit the defendant; was afraid police would not allow witness to see him; read in the paper they did not want people to visit him.

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Thereupon, CHARLES H. BRADLEY, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that in January, 1919, he was a member of the Metropolitan police force, and on Wednesday, the 29th of that month, about 9 p. m. went to 2023 Kalorama Road, rang the bell, waited a few minutes, rang again, looked in, observed no one, tried the door; locked; rang again; no response, tried the side window facing the east, locked, saw a derby hat on the hall rack and a coat on the chair in reception hall; saw a dark derby hat and light muffler on the hall rack; witness remained there about ten minutes, then went around to back of the house, saw a light upstairs on the third floor; returned to the front of the house, took a card out of his pocket and put it through the letter receiver in the door; occasion for going there that evening was that when he got to his station, between 4 and 5 o'clock, the station clerk told him something.

On cross-examination witness stated had been to the mission house on July, 1918, because there was some trouble about stealing in the mission house; the inmates then were Dr. Wong, Mr. Hsie, and Mr. Wu. Tried that particular window that night because on his previous visit there, had been informed by Dr. Wong and Mr. Hsie it was usually left open, for when they would go out to play tennis would invariably leave the key of the house, so usually left the window open to get in. In the summer evenings witness had watched the house a week at a time, and again about four days. A new house was being built in the rear of the mission. There was no light downstairs; light in Mr. Hsie's room on third floor. The muffler was a dark muffler.

Thereupon, THOMAS JUDGE, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is a captain of the police force, and was such January 31, 1919, on which day, about 6.30 p. m., he went to 2023 Kalorama Road N. W., saw a card with C. H. Bradley's name on it laying on the table in the library or living room table or desk. Went to the basement that night, and remembers the gas was turned on in the hot water boiler; it was very hot, steaming; not the furnace but the hot water heater.

On cross-examination witness says the heater was at the back window in the rear of the house; does not remember picking the card up; cannot be positive whether on the table or on the desk; has not seen the card since.

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Thereupon, HARRY EVANS, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is a member of the Metropolitan police force; went to 2023 Kalorama Road in January, 1919, around 6 o'clock p. m., searched a body at the foot of the stairs on the first floor, found a bill folder, small pocketbook, watch and chain, ring, and letter, and being asked if he searched any other bodies, counsel for defendant objected to testimony relating to others than Wu, which objection was overruled and defendant allowed an exception. Witness said — searched the body of Mr. Hsie, found some change near his body; pockets pulled out; one of the bodies was in shirt sleeves.

On cross-examination witness says that the letter on Dr. Wong's body was partly out of the coat, laying on his breast; however, did not make any effort to handle the various articles carefully to preserve fingerprints; got two watches, two chains, two lead pencils, two fountain pens off Mr. Hsie's body; thinks his face was up; coroner had already been there.

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Thereupon, FRED SANDBERG, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is official photographer for the police department, a detective sergeant in rank. He remembers going to 2023 Kalorama Road January 31, 1919, about 7 p. m. Witness took certain pictures of premises 2023 Kalorama Road N. W. On January 31, 1919, between the hours of 7 and 8 o'clock p. m., witness took the pictures identified as "Sandberg 1" and "Sandberg 2." "Sandberg 1" was a photograph showing the body identified by Kang Li as Dr. Wong. Marked on said picture in red ink was: "Body of Dr. T. T. Wong, 1-31-19," the witness Sandberg having testified said red ink marks were his. "Sandberg 2" was a photograph of the furnace room of 2025 Kalorama Road with the two bodies, and a revolver lying upon a chair. Marked on "Sandberg 2" in red ink was the following: Furnace room 1-31-19. Revolver. Body of C. H. Hsie. Body of Ben Sen Wu," the witness Sandberg having testified the said red ink marks were his. Witness testified that he went to the basement



of the house immediately after the bodies were discovered there, that Detective Sergeants Embrey, Kelly, Inspector Grant, Kang Li, and maybe one or two more, and Captain Judge, were there ahead of him; witness took the picture "Sandberg 2" in the position they were when he first saw them; can not say of his own knowledge whether the posture of the bodies had been changed; no one had moved the bodies so far as witness knew. Said photographs "Sandberg 1" and "Sandberg 2" were offered for exhibition to the jury. Counsel for defendant objected thereto on the ground that said pictures contained more than the body mentioned in the indictment, another body being shown in the picture; there was no necessity for the photographs; they were inflammatory, and that there was no proof of the exact condition in which the bodies lay when found; they were exhibits which should not go to the jury, and that there was no testimony that the witness knew whose bodies they were, and that they contained certain marks in ink on them. The court overruled the objection and allowed the defendant an exception, and the exhibits were shown to the jury.

On February 1, 1919, after nine o'clock in the morning, witness took the pictures identified as "Sandberg 3," "Sandberg 4," "Sandberg 5," "Sandberg 6," "Sandberg 7," "Sandberg 8," and "Sandberg 9." "Sandberg 3," "Sandberg 5," and "Sandberg 9" all were photographs of the back room on the first floor from different angles. There were no marks on "Sandberg 9;" the marks on "Sandberg 3" were 2-1-19"; and there were marks in red ink on "Sandberg [fol. 47] 5" as follows: "Office 1st floor rear. 2-1-19. Door leading to basement; cross where body of Dr. Wong laid." Witness Sandberg testified the red ink marks were his. On "Sandberg 5" there was also the word "Judge" written thereon by the stenographer who reported the trial, said work purporting to indicate where Captain Judge found a card of Officer C. H. Bradley.

"Sandberg 4," "Sandberg 7" and "Sandberg 8" were photographs of the kitchen of 2023 Kalorama Road.

"Sandberg 6" was a photograph of the front of the house 2023 Kalorama Road N. W.

With respect to said photographs taken on February 1, 1919, witness Sandberg testified the conditions were the same as he found them on the night of January 31, 1919. The said pictures taken on February 1, 1919, being offered in evidence, counsel for defendant objected on the ground that there was no necessity for them; that they were inflammatory and there was no reason for introducing them; and on the further ground that there were certain marks on said pictures. The objection was overruled and the defendant allowed an exception, and the photographs were exhibited to the jury, the court stating that the marks on the photographs were to be ignored.

On February 18, 1919, witness took the picture identified as "Sandberg 10," showing the front door and hatrack in the hall of 2023 Kalorama Road N. W.; said picture was offered in evidence. Thereupon the following occurred:



"By Mr. Laws:

Q. Sandberg No. 10 is a picture of what?

A. The front hall, or the hall inside of the front door leading direct into the house.

Mr. Laws: Your honor, I offer that in evidence.

Mr. O'Shea: Wait a minute. That was taken on February 18th.

The Witness: Yes, sir.

Mr. O'Shea: We object, if the court, please, unless it is known that that *this* an exact—that the condition- were exactly the same on the 18th as they were on the night of this alleged tragedy.

The Court: Can you show that there had been no change, Mr. Laws?

Mr. Laws: I can, your honor, but the point I want to show is that here is the door.

The Court: That is all?

Mr. Laws: That is all. I offer it for that purpose only.

Mr. O'Shea: No matter for what purpose it is offered, unless the conditions are the same we object to it.

The Court: You will have to show that the conditions were the same.

Mr. Laws: All right, your honor.

By Mr. Laws:

Q. Was the door to the house in the same condition?

A. Yes.

Q. In the same place as it was when your took this picture?

A. Yes, sir.

Q. What about the hatrack?

[fol. 48] A. The hatrack was there, too.

Q. The hatrack was the same?

A. Yes.

Q. What about the hats on the rack?

A. They are not the same, no.

Mr. Laws: I offer it in evidence, your honor.

Mr. O'Shea: We object.

The Court: What did he say was not exactly the same?

Mr. Laws: The hats on the rack.

The Court: You submit it as showing the door, and the witness says it was in the same condition as it was on the 31st?

Mr. O'Shea: I did not understand him to say that.

Mr. Laws: Yes; he said that.

Mr. O'Shea: Was the door open on the 31st?

The Witness: It was open when we were going in and out. It was open part of the time.

By Mr. Laws:

Q. Sandberg No. 6 is a picture of what?

A. The house No. 2023 Kalorama Road; the front of the house.

Q. That was taken on the morning of the 1st, I believe you said?  
A. Yes.

Mr. Laws: If your honor please, I offer that in evidence.

Mr. O'Shea: What is that?

The Court: The front of the house. Admitted."

(The photographs referred to were thereupon exhibited to the jury.)

When witness went down in the basement January 31st, found a pistol, shown him by the assistant district attorney, and two empty shells in it, calibre .32; chair was turned over in the kitchen, as shown in Sandberg No. 8; said photograph contains red-ink marks showing bullet marks; witness photographed the room to show where the marks were, one had ploughed through the back of the table and struck up against the wall, partly imbedded in the table and partly in the wall; another had rebounded from the wall and was on the floor. Counsel for defendant objected to this last statement of a bullet rebounding from the wall and being on the floor. Thereupon the following occurred:

"Q. How do you know that?

A. By the marks.

Mr. O'Shea: I object to that.

By the Court: Did you find where it struck the wall and then fell on the table?

A. Yes; on the floor."

Objection was overruled, and defendant allowed an exception, and over the objection and exception of the defendant the pistol and Sandberg No. 8 were admitted in evidence and exhibited to the jury. Witness says Sandberg No. 4 shows a drawer opened by witness in which he found fifteen loaded cartridges and three empty shells, calibre .32; knows of no change in the condition from previous night, except that witness had pulled out the drawer shown pulled out in picture. Over the objection and exception of the defendant, Sandberg No. 4 was admitted in evidence and exhibited [fol. 49] to the jury. Witness says he also found three empty shells in the drawer and one loaded one in the office on the first floor where the chair was overturned and one empty shells; while witness was taking picture of the body on the first floor, underneath the tripod of the camera, found this shell on the night of the 31st, and the following morning, February 1st, found another empty shell about eight or ten inches from where — found the first one, near the door between the office and the room where the body was found. Witness found on February 1st, in the middle room of the third floor, in a desk drawer, a box containing twenty-six loaded cartridges, .32 calibre; Sandberg numbers 11, 12, 13, 14, and 15 are photographs taken by witness, number 11 on February 5th, number 12 about February 2nd, numbers 13 and 15 on the same day as number 12,

not positive of the day; number 14 taken some days afterwards, would not like to say what day.

At the bench, the district attorney said he expected to prove by another witness that Sandberg numbers 11, 12, 13, and 14, purporting to be photographs of the handwriting of defendant, were compared by defendant and Major Pullman with the stub book and the defendant admitted that the stub was in his handwriting.

Over the objection and exception of defendant, the witness said Sandberg No. 11 is the photograph of stub 24 in the check book, "Dent Number 1"; number 12 is the photograph taken of the hotel register at the Harris Hotel, Prigg number 1; number 13 is photograph taken from the back of a check (bearing the writing "Z. S. Wan"); number 14 is taken from a piece of paper brought witness by Burlingame or Grant, marked "Burlingame 1" (containing the name and address of the defendant).

On cross-examination witness said, with respect to Sandberg number 1, can only say from hearsay whether or not an overcoat had been taken off the head of the body shown in picture; does not know whether it represents an exact reproduction of the way the body was originally found, but it was the way it was when witness came to the house; the picture showed an overcoat lying on the lower step of the stair leading to the second floor; does not believe that overcoat was removed from the head of the body in witness's presence; unable to swear that the picture indicates the way the body was when first found, because was not the first man in the house. Witness was the first man to take possession of the pistol and kept it in his hand until the following morning, when he made a further examination of it in daylight; is the fingerprint expert of the police department; searched the pistol in an effort to discover fingerprints on it; found fingerprints on it; took the fingerprints of the defendant, Wan. Thereupon the following occurred:

"Q. And were you able to distinguish from your examination of that pistol his (defendant's) fingerprints on that pistol at any place?"

"A. The fingerprints on the pistol were indistinct and no details that an identification could be based on."

There were some fingerprints on a lamp shade similar to those on the gun; they were indistinct and in no condition to base identification on. All the pictures inside the house are flash lights. Witness did not measure the height from the floor of the bullet hole in the wall shown on Sandberg number 8, or the distance between the [fol. 50] table and that bullet hole. The drawer which had been pulled out, referred to in Sandberg No. 4, is not shown in the picture. Witness never took fingerprints of Kang Li and never made measurement of the size of the bullet hole in the wall. Witness went to the house the night of January 31st to discover all the evidence he could, and being asked how it was he overlooked the empty shell and full cartridge which he testified he found next morning, says the light went out and "we left evidence till the next morning so we could have daylight"; had flash lights and made as thorough a search as could with flash lights; witness left that night at nine or

ten o'clock, leaving an officer in charge there; does not remember who he was. The desk where witness found the box of cartridges is a sort of private desk, more like a ladies' desk; the box was in the corner of the drawer which was shut; the cartridges were not found until the next morning.

On redirect examination witness said Sandberg number 13 is a photograph of Diehl number 6; Sandberg number 14 is a photograph of the paper marked "B-1." The defendant's fingerprints were taken on February 9th for future identification.

On recross examination witness said he did not take any fingerprints of the dead bodies.

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Thereupon, WARREN O. EMBREY, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is a member of the Metropolitan police force, and on January 31, 1919, went to 2023 Kalorama Road about 6.00 p. m., went all over the building that day; asked if anyone was with him at the time, says Capt. Judge followed close behind him, and there was Mr. Sandberg and several other men; went to the basement shortly ahead of Sandberg, but conditions were the same when Sandberg came to the room; witness was first man in furnace room; saw a gun laid on a chair up to the right of the two dead Chinamen laying beside the wall and the entrance to the furnace room. The gas heater was burning and the water was boiling, very hot.

On cross-examination states that Kang Li was at the house when witness got there; does not know how long he had been there; is not positive whether witness or Capt. Judge or who got to the house first, several went together in an automobile; entered through the front door; does not know who got in first; witness was first man in the furnace room, but can not say in regard to the kitchen; kitchen was disarranged and looked like there had been some scuffling; was in search of men in the house and could see plainly there was no one in the kitchen, and so looked into the furnace room; did not have any information there were men there; asked why he searched the basement first rather than going upstairs, says does not think he stated went to the basement first; went upstairs, but whether before or after is not positive; when came in the front room there was an overcoat over the face of the body in the reception hall; some one picked it up and looked at the face of the man, does not remember who; it was laid back; is not positive whether Mr. Sandberg took pictures or not, guesses he did; does not remember whether he took pictures in the furnace room at that time.

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Thereupon, Dr. J. RAMSAY NEVITT, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is, and was in January, 1919, the District of Columbia [fol. 51] coroner; and on the night of January 31, 1919, went to

2023 Kalorama Road about six o'clock; saw one body in the reception hall and two down in the cellar; later, at the morgue, an autopsy was performed on the bodies by Dr. E. W. Titus, deputy coroner, acting in the place of Deputy Coroner Dr. Carr, who was in the service; witness was present at the autopsy, and being asked if he can tell the result of the autopsy on all three bodies, objection was made on behalf of the defendant on the ground that testimony should be limited to the body of Mr. Wu; the objection was overruled and an exception allowed the defendant, and over the objection and exception of defendant the witness said he could tell the result of the autopsy, and proceeded in the following manner to describe the wounds on the body on the first floor, after refreshing his recollection from notes made by Dr. Titus at the time: Incised wound or cut on the right forehead, about two inches long, extending to the periosteum of the skin covering the bone, such a wound is caused by a sharp instrument; there was an abrasion on top of the head and forehead and abrasions in the back, three or four in the back of the head; abrasions on the back of the right hand and wrist; abrasions are simply where part of the tissue is destroyed but not through the true skin, like a scraping wound, caused by some object coming in violent contact with the tissues; there were two gunshot wounds, one through the heart about the third rib, and the other a little below the fourth rib, which is the axilla; the point of entrance of one was through the heart, and the other, the axilla; one bullet was found lodged in the right lung and the other almost down diagonally across the body to the seventh rib in the tissue of the muscular tissue over the lung. Being asked to indicate on counsel for the United States point of entrance, counsel for defendant objected to the use of Mr. Laws in that manner and in making a demonstration before the jury; which objection was overruled, and the defendant allowed an objection to that action, and the witness proceeded to demonstrate the course of both bullets; there was a large contusion or bruise on the right chest, extending from the third to the sixth ribs and the sternum or breast bone; bullets removed from the body were .32 calibre; the gunshot wound in the heart would be fatal. Witness remembers the two bodies in the basement; the one more fully dressed of the two had a pillow covering the head, with gunshot wound in the head in front where the bullet was found; no other wounds and no powder marks on body; the third body, in the basement, had two fatal bullet wounds, one above the third rib, going through the heart, and the other lodged in the right frontal lobe; all the bullets were thirty-two.

The autopsy was performed February 1st, and witness should say they had been dead "thirty-six hours plus"; a longer time can not be determined with any degree of accuracy; in witness's judgment had been dead at least thirty-six hours; the bodies were seen by witness the night before and rigor mortis had then taken place and passed away, which takes several hours, especially in cold weather.

On cross-examination states, reason says rigor mortis had passed is the bodies were cold; the bodies were not in the same condition,

that on the first floor was in a further advanced state of decomposition than the other two; does not think condition of the room would have a lot to do with that, but the entrance of the gas bacillus [fol. 52] in the body would; did not take any temperature of the body; rigor mortis is prolonged in cold weather and disappears more rapidly in warm weather; found that room rather cold; can not say as to when rigor mortis in that body passed away, because the entrance of gas bacillus makes a different condition; does not recall a coat over the face when witness first saw that body on the first floor; did not notice a letter sticking out of the pocket; asked whether the body had not been dead nearer thirty-six than forty-eight hours, says the autopsy was performed about noon and can not say, but would say thirty-six hours plus at the time it came to the morgue; took no temperature of the body at the autopsy or of the place where it was found; noticed no evidence of food; can not say what a hypostatic area or condition is, unable to say whether it would exist in cases of rigor mortis; does not recall any contraction of the hands or otherwise; Dr. Titus got there before witness; witness thinks he made an examination, and he was the first man from witness's office who saw the body. The bruises on the chest could have been caused by a fall and striking some object; the laceration on the forehead was about two inches long and extended down to the periosteum, or skull. When witness speaks of thirty-six hours plus, predicates it from the time of the autopsy, February 1st, about noon; first saw the body eight o'clock the previous evening. Dr. Titus had seen the bodies down stairs before witness; can not say whether it was warmer down stairs; temperature of the furnace room or of the bodies was not taken; does not know whether the bodies had been disturbed before witness got there. Can not tell when rigor mortis set in in the body with pillow over the head upon which autopsy was performed February 1st, between noon and 1.30, or whether there was evidence of food in the stomach, or whether it met with death before or after the body upstairs; knows of no way of determining; knows of no way known to the medical world of determining that; examination of the blood would not tell when rigor mortis passed. From condition of the tissues would say the body with the pillow over its head met with death "thirty-six hours plus."

On redirect examination, being asked why he adds "plus," ~~says~~ <sup>states</sup> unless a considerably longer time than that, would be unable to tell with any degree of accuracy.

On recross-examination says can not tell whether forty-eight or fifty hours, so says thirty-six hours plus; it was longer than twenty-four hours.

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Thereupon, GUY E. BURLINGAME, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is a lieutenant at detective headquarters, Metropolitan police force; investigated the case at 2023 Kalorama Road; went there probably between ten and eleven p. m., January 31, 1919; being shown a handkerchief, identifies it as one he picked up on the kitchen



floor at the foot of the stairway leading up to the back parlor, in the same condition it now is, with the printed word "Wong" on it in ink. The handkerchief is admitted in evidence. Witness left Washington that night shortly after midnight with Mr. Kang Li and Detective Sergeant Kelly, arriving in New York Saturday morning, February 1st, and in company with a New York officer went to 313 West 112th Street, probably between 7.30 and 8.00 a. m. The New York officer, witness, and Kelly went to the defendant's room with Mrs. Bartels, [fol. 53] rapped, and, when Mr. Van opened the door, she said there were three gentlemen to see defendant; they immediately entered the room; witness announced were detectives from Washington investigating the death of Dr. Wong; defendant was sitting up in bed in his underclothing, with gray sweater coat on, and witness thinks a pair of gloves; New York newspapers scattered over bed; defendant had a book or tablet in his hand and on that a piece of paper and pencil and witness saw some writing; defendant said had just learned of the death of Dr. Wong and others through New York newspapers; help up the paper and said, "I was just," witness thinks "drafting" was the word he used, "a telegram to my very good friend, Mr. Li, in Washington, to express my sorrow and condolence," and one thing and another; witness reached over and took the paper from his hand, read it, identifies it as the paper handed to him by the assistant district attorney, and the paper containing the words "shocked to read of the death" is admitted in evidence. Defendant asked quite a number of questions regarding the deaths, when they were killed, when the bodies discovered, and location, saying what good friends they were of his, how shocked he was, whether we had found the murderers or who killed them; witness told him no; witness asked Wan how long he had been in Washington and was it his first trip there, how he liked the city, how he enjoyed himself, and asked him when he left Washington; he said he left Washington that afternoon of the 27th; had been in Washington about a week; witness then had Kelly call Kang Li; the latter two entered the room; Kang Li and the two brothers spoke; the defendant being asked when did he say he left Washington, said the 29th. Counsel for the defendant being permitted to make inquiries of the witness at this stage, the latter said that up to this time had not told defendant anything he said would be used against him; had not advised him of his rights at all; defendant had expressed a wish to go to Washington, might be something he could do to assist in locating the murderers of his friends, and witness said he would be glad to have him, as "from the information that we have, as far as we know you are probably the last man that saw these men alive"; said he would like very much to go, would go, but did not have any money; witness said would be glad to pay his expenses, and defendant said did not think his physical condition would permit it; might need medical attention, his stomach was bad, could only eat certain things at that time, mostly fruit, and might not be able to get the proper food; witness assured him would pay his expenses and see that he got the proper food and medical attention if needed; witness promised him he, himself, would



get it for him, and Kang Li said he thought he ought to do everything he could to help find the murderers, because Dr. Wong and the others were good friends of theirs, and mentioned that either of them might be suspected; that he saw defendant in the house on Wednesday evening, and he, Kang Li, discovered the bodies, and Li volunteered to nurse him and help look after him; about this time Van said did not think his brother's physical condition would permit, but after some further conversation defendant consented to be dressed, put a few things in a suit case, and then left the house; defendant wore a dark suit, thinks, old, dark brown overcoat, and brown felt hat, and light-colored muffler. We went from [fol. 54] the house to the Pennsylvania Station and there we got breakfast; Wan ate with us; arrived in Washington five or six p. m., February 1st; went to police room at Union Station; witness called Inspector Grant; police automobile came, and we all went to 409 Fifteenth Street, occupied as a clinic; took him there on instructions from the inspector, and because of his physical condition; he claimed to feel very badly, and he did not want to be annoyed and we did not want him to be annoyed by visitors; had no place around the District Building or station house where we could talk to him and have any privacy; there were always newspaper men, police officers, and others, simply through curiosity who wanted to see what was going on; was an unusual case, and thought we should handle it very carefully and in an unusual manner.

Witness is shown a paper marked "Burlingame 1" for identification, being a slip which he says was taken from a notebook belonging to Mr. Li. There was some handwriting in ink on top line which was scratched out by Wan. Mr. Li had handed defendant a small notebook and the latter had written his name and address on it, and witness shortly afterward took it from Li, who had some other memoranda on the back, and instead of tearing out the page, witness just cut out the signature and address that defendant had put on the book. In response to inquiries of counsel for defendant, says it was written on the train en route from New York to Washington, when Li and defendant were in conversation, and Li had defendant write this without any suggestion whatever from witness or Mr. Kelly; Li asked defendant to give him his address and Wan said to give him paper or something and he would write it; feels safe in saying Kelly did not request Li to do this; paper is admitted in evidence for the purpose of comparison.

On this Saturday night at the house on 15th Street there were present besides witness and defendant, Kang Li, Major Pullman, Inspector Grant, Sergeant Kelly, and, a little later, some of the men from the Riggs Bank; defendant was questioned and being asked whether anything was said by him, counsel for defendant was permitted to inquire, and witness said no suggestion was made by witness or anyone in his presence that anything defendant said would be used against him, was not advised of his rights; witness said that Major Pullman questioned defendant, who said he left Washington on the night of the 29th at 8 15, and there was quite a little talk; defendant said Mr. Wu had gone to the station with him;

Major Pullman told him that could not be possible because he knew where Mr. Wu was; defendant said Mr. Wu got some fruit and defendant ate it at the station, and when pressed he was assured it was impossible that he should have left at 8.15, and defendant refused to talk any more about it at that time. Defendant was asked by Major Pullman if he took a check for \$5,000 on the Chinese Educational Mission check to the Riggs Bank and attempted to get it cashed; he denied it and denied knowing anything about the check, and the Major told him we're going to bring the bank men to see if they could identify you, and defendant said, "Bring the bank men, let them see me, and they will tell you they never saw me"; the bank men came and did not identify him; after this witness had some conversation with defendant about his brother, Van. Witness was then [fol. 55] shown a check previously identified by Mr. Ratcliffe (Ratcliffe No. 8), bearing the signature of Mr. Wu, payable to the defendant, which the witness says he took off of defendant at the 15th Street house when he searched him before he took him away from there; the check being offered in evidence, counsel for defendant objected as irrelevant and immaterial, which objection was overruled, to which action defendant was allowed an exception, and the check was admitted in evidence and shown to the jury. Defendant was questioned this night until about ten o'clock, and after they were through questioning him, about that time, was taken to the Dewey Hotel; witness has not and can not detail all of the conversation; witness does not know whether he was questioned any more that night at Dewey Hotel; witness saw him five or six times at least at the hotel during that week, questioned him, and, his attention being directed to questioning him about Thursday or Friday with respect to the bank, witness says, in response to inquiries by counsel for the defendant, that he had not advised defendant of his rights at that time, or that what he said would be used against him, nor had any one in witness's presence done this, and witness proceeded to state that he recalled the conversation on Friday afternoon, February 7th, Inspector Grant asked the question; being asked what it was, counsel for the defendant was permitted to examine the witness at this point before the question was answered, and, on cross-examination, witness said could not say whether defendant was questioned by any one connected with the police department on Sunday, February 2nd; witness does not recall questioning him on Sunday; had defendant practically detained at the Dewey Hotel with a man on guard in the room with him; he was taken to the Dewey Hotel because of his physical condition, and the poor arrangements we had around the District Building and police stations; one reason was, wanted to keep people from seeing him; defendant did not ask for a lawyer at any time; defendant asked on two or three occasions to see his brother; does not recall of personal knowledge a doctor called in to see defendant on Sunday, or up to Thursday or Friday; being asked if it was not a fact that doctor had been called four times during that interval, witness said he understood a doctor had been called in, up to the following Thursday or Friday, several times;

witness asked that it be done on account of defendant's physical condition, to live up to witness's promise to him; witness had promised Wan that he should have nothing but proper food and medical attention, and it was witness's desire to see what his physical condition was and if possible to live up to witness's promise to him; can not say whether had conversation with defendant on Monday, because saw him pretty nearly every day; nothing special directed witness's attention to Monday; saw him there every day, always with some one else, sometimes Inspector Grant, sometimes Inspector Grant and Sergeant Kelly; once or twice thinks the Major saw him; would see him sometimes in the daytime, sometimes in the early part of the night; never after twelve o'clock at the Dewey Hotel; made no memoranda of his visits; only memoranda made was when something out of the ordinary developed; cannot say whether saw him on Tuesday; saw him nearly every day, cannot tell the particular days; defendant did not leave the Dewey Hotel from Saturday night about [fol. 56] ten o'clock until the following Saturday night; he had not expressed any desire to leave it to witness; has every reason to think he was questioned during other hours of the day than the time witness was there by Major Pullman, Inspector Grant, and Detective Kelly, and being asked if witness's purpose in going to see him was to get a confession, answers it was for the purpose of obtaining any information that he might be able to give; being asked the same question again, answered, "if he had anything to confess, we were willing to listen to it," and asked again if witness was trying to get him to confess, answered, "we were asking him to tell us what he knew about it, questioning him about the check and murder and his visit to the house." During all of the time he was sick had stomach trouble; should say from conversations with others in defendant's presence, doctor visited defendant at least four or five times; asked if they did not have his brother, Van, detained at the Dewey Hotel in another room, and would not permit defendant to see his brother, though he was continually calling to have his brother come to see him and to treat him, witness answered yes, but would qualify that question a little; defendant at different intervals did say he would like to see his brother; had probably asked witness once or twice; expressed it more as a wish; wished his brother would come down to see him, he would like to see him; did not permit it because did not think it was just the proper thing to do at that time; would hamper the investigation; looked like his brother Van was implicated and did not care to let them get together and talk it over; no one made a suggestion in witness's presence that if defendant would confess, would permit him to see his brother and allow his brother to treat him, but later on did permit defendant to see his brother; talked with defendant sometimes in the morning, sometimes in the evening, sometimes around eight or nine or ten o'clock p. m., for a half or three quarters of an hour at a time; other men always present; witness might talk to him a few minutes, ask him a few questions, and something might occur to the inspector and he would ask him a question or two, and then witness might ask something else; de-

defendant would talk about every subject under the sun, from the Boxer uprising to the peace and war situation; sometimes witness has sat and talked to him, or, rather, talked at him twenty minutes or half an hour, and asked him could he explain certain phases of this case, without his uttering a word or making any reply whatever; and when he did say something would be entirely foreign to the investigation; means by phases of the case, discussing the handwriting on the check, the Chinaman going into the bank with the check and attempting to get it cashed, about the murder of the three men; during this time he was sick, in bed, sitting up a good deal of the time. Thereupon the following occurred:

"Q. Now, on that Saturday night when you brought him from New York you were with him from about seven o'clock or half past seven in the morning up until ten or eleven o'clock that night?

"A. Yes, sir.

"Q. Is it not a fact, Mr. Burlingame, that he was kept at 409 15th Street NW. from five or six o'clock in the evening until away after twelve o'clock that night?

[fol. 57] "A. I do not think so. My recollection is that he was taken from the 15th Street house somewhere around ten o'clock, or possibly a little after ten o'clock. I do not think it was later than half past ten."

You might term it that he was under arrest; did not advise him of that fact or put a charge against him; not enough at that time to justify the charge, but held him because investigation was getting rather interesting from what got out of defendant and taken as a whole; would say that witness questioned him every day; sometimes it would be five or ten minutes defendant would not utter a word or answer a question or talk to witness; sometimes would be longer; thinks this occurred at every conversation with him during the week; sometimes one of us would ask a few questions and then another; just three or four or five handed conversation, whoever was with him; can not say how many times witness talked with defendant on Tuesday, Wednesday, Thursday, Friday, or how many times he was questioned in witness's presence on those days; remembers important development Friday afternoon, when Grant, Kelly, and witness were present, up to which time defendant had not been advised of his rights or told anything he said would be used against him, to witness's knowledge; the important development was during a conversation between Inspector Grant and defendant; does not know how many times Inspector Grant had talked to him until this Friday; being asked if Inspector Grant, in witness's presence, suggested to defendant he would let him see his brother, answered, "Well, I could hardly answer the question in that way; I know that no one—probably Tuesday or Friday he asked to see his brother, asked if his brother had come yet, and could he see him, and my recollection is now the inspector said yes, he could see him;" can not say whether he had been permitted to see the newspapers. Witness being asked if he had ever made any suggestions to the defendant during those

four or five days as to how this triple murder took place, said, "Well, that is rather hard to answer in that way, Mr. O'Shea," the triple murder was talked over and discussed in almost every way imaginable; defendant asked the officers a number of times to describe just how the dead bodies were found, where each body was found, during that week at the hotel, and he would ask on two or three occasions to be taken up to the house; he wanted to see the house again, to see how everything was around the house, and in reply to one of those requests we told him we would take him to the house and the arrangements were made to take him there on Friday and then he broke his glasses and did not want to go; can not say witness made suggestions to him, only that the murder was discussed; he was sick all that time, most of the time in bed; had every attention he expressed a desire for; had expressed a desire for his brother, and was not granted that request until—brother probably came on Monday evening; was at the same hotel; first told defendant his brother was in Washington about Thursday or Friday.

Thereupon counsel for the defendant objected to the witness telling of the important development which occurred during the conversation between Inspector Grant and the defendant, above referred to, on the grounds that defendant should be permitted pre-[fol. 58] viously to examine any and all persons who had anything to do with the defendant during the four or five days he was confined, to determine whether or not any statement, or alleged statement, made by him was voluntary or otherwise, and on the ground that the burden of proof is on the Government to show that any admission or statement made by the defendant was voluntary, not obtained through duress or coercion or otherwise; that the confession is not admissible in evidence until it is shown to be voluntary; that the witness has shown that there were others besides himself concerned with the admissions.

Thereupon the court said that if, "after the hearing of the testimony of those who had conversation with defendant, I should conclude myself that the statement was not voluntary, within the meaning of that term as applied to admissions, I would strike all the evidence out, and if there should develop a contest over that point as to whether or not it was a voluntary statement, then I would submit that contest to the jury, under instructions as to the conditions, but at this time I do not propose to have all of the men called as to whether or not somebody said something or did something which would affect this statement as to its being a voluntary statement or otherwise." Thereupon counsel for the defendant said that as he understood the rule the burden was upon the Government to show that any admission or statement made by this defendant was voluntary and was not obtained through any duress or coercion or otherwise; thereupon the court said that in the last analysis, when it is submitted to the jury, the burden of proof is upon the Government to satisfy the jury that it is voluntary, but that the burden of proof is not upon the Government at this time to prove that it is voluntary has never been ruled upon in any court that he knew of; thereupon counsel for the defendant stated that the admission or confession

is not admissible in evidence unless it is voluntary; the court said he was prepared to rule upon the admissibility of the statement of Friday, tentatively, subject to instructions which he would subsequently give to the jury; counsel for the defendant stated that the defendant was not advised of his rights at all, and the court said, "Well, that has been passed upon in several cases. In one case it was held that it was not necessary to advise a man on what you call his rights. It is more of a privilege than a right."

Thereupon, in answer to questions of the court, the witness said, to his knowledge or information, no promise or reward or hope of immunity was offered to defendant to make any statement, and every statement he made was voluntary; there was no threat, no promise, no harsh means to extract any statement from him under any promise or anything; that was nothing beyond his confinement and being rendered immune from other people and the questions; that he had stomach trouble, but he would be up and around; he sat up in bed a great deal; his mind was clear. Thereupon the court overruled the objection and stated that the witness might go on with his statement on the rule that, as a matter of law, there was nothing to show that it was an involuntary statement, and that as a matter of law he would now admit the statement, to which action of the court defendant prayed an exception, which was allowed, and thereupon, over the objection and exception of the defendant, the witness said that on [fol. 59] Friday afternoon (in a conversation between Inspector Grant and defendant, the inspector took the matter up in the following way: He said, "Wan, leaving the murder of the three men out of it, the check is a separate proposition, and it has nothing to do with the murder; just leave the murder out of it; tell me who went in the bank and attempted to get this check cashed." Thereupon counsel for the defendant objected to the admission of any statement of defendant in answer to the above question in the nature of a confession on the ground that the question contained an inducement, a hope produced upon the defendant's mind, and prevented this statement from being voluntary. Thereupon the court overruled the objection, saying he would admit the statement, to which action of the court defendant prayed an exception, which was allowed. Thereupon the witness stated the defendant hesitated probably a minute, looked up, and said, "If you find the man who went into the bank with the check, you will find the murderer." The inspector then said, "We know who went into the bank; your brother Van went into the bank, and he has told us about it; he told us that he went into the bank with a check and attempted to get it cashed, and he left you outside." And then defendant became very angry, jumped up and down in bed, and said, "It's a lie." He would talk no more, and it was some time before he would say anything about anybody. The Saturday following this Friday witness took Wan to 2023 Kalorama Road, some time around seven or eight o'clock, at his own request, in company with Inspector Grant, Detective Kelly, and witness; Wan had repeatedly expressed the desire to go there to look the house over, and we told him we would take



him and arrangements had been made for him to go on Friday, and he had broken his glasses, and he did not want to go unless he could see everything plainly; the glasses had been sent to be repaired, and he got them back, and we took him there at his request on Saturday. Kang Li was in the closet there for a while when the two brothers were allowed to meet. Witness brought Van up in a machine from the hotel with Detective Vermillion; the witness being asked what was done, counsel for defendant renewed his objection to this line of evidence, and in answer to questions by the court the witness said there were other conversations had with the defendant between the time of the alleged statement of Friday and the time he was taken to the mission house; no threats were made or coercion used, or promise or hope of reward, absolutely nothing of that kind; and in answers to questions of counsel for the defendant he says witness had a conversation with him on Saturday before he took him to the mission house; defendant had made no special request to go there on Friday; did not tell him were taking him there to see his brother; but it occurs to witness there had been some talk about his brother, and probably some one said, "Well, you shall see your brother," or something like that; probably Inspector Grant, Kelly, or witness; witness did not hear any profanity used, and Major Pullman did not remonstrate with witness because of the rough usage witness gave defendant; it would be impossible for witness to say all the questions he asked defendant. Thereupon the court overruled the objection, to which action the defendant prayed an exception, which was allowed. Thereupon the witness said, "When they took [fol. 60] Wan to the mission house, went into the parlor and sat down a few minutes," and witness left defendant and the other men upstairs and went into the back part of the house and down into the basement and turned on the lights; about that time Major Pullman came in; somebody said to defendant if he wanted to see where these three men were found would show him, so he was taken over the house and walked around, and he asked a great many questions: "Who laid there?" There was the spot where Dr. Wong's body lay; quite a spot of blood; he asked who was found there and whose blood, something to that effect; he was taken down in the basement and shown the position of the other bodies; he asked about the revolver, where it was found, and they told him; then he went through the house in a general way; when he was taken up into the room where Kang Li was in the closet, witness left to go for Van, and took him upstairs to see his brother, somewhere about eight or nine o'clock; witness being asked in regard to Major Pullman questioning defendant with respect to check stub, says it was between ten and eleven o'clock; says that the check book, "Dent No. 1," and the check stub, "Dent No. 24," containing the words "T. T. Wong, \$5,000," in the check book of the Chinese Educational Mission, shown witness, figured in the question; and being shown "Sandberg Exhibits 12, 13, and 14," photographic copies of certain handwriting, witness said they figured in the conversation; and being asked to explain what was said counsel for defendant objected to any conversation relating to said Exhibits 12, 13, and 14, for the reason that they are not



the best but secondary evidence; that there is nothing in the case to show that they are exact reproductions of alleged originals or that they have not been magnified; that the original of one of them is already in evidence, and there is no reason for introducing a photographic copy of it; there is nothing in the case to show anything connecting the \$5,000 stub with the alleged forgery now in evidence, in whose handwriting the stub is, and it was not proper to take this stub in original handwriting, the identity of which is not known, and put it in comparison with photographic copies of handwriting in the effort to prove whose handwriting is on the stub, even by an alleged admission or confession, and on the further ground that the only theory upon which an admission as to the check stub would be material is the indictment charges homicide in the commission or attempted commission of forgery, whereas the check stub is not a subject of forgery, and any admission as to the stub is not an admission which is material on the question of forgery of check, and on the further ground that the charge is forgery of the check; there has been no connection made between the alleged forged check and this stub, but, on the contrary, the bank officials stated that the check was payable to bearer, while this stub is not; it is not shown that the check was not written prior to the stub or when it was written. Thereupon the court overruled the objection, to which action of the court defendant prayed an exception, which was allowed. The witness said there were present at the time of the statement concerning the handwriting himself, Major Pullman, Inspector Grant, and Sergeant Kelly; that Major Pullman showed Wan a number of papers, most of which were known to be in defendant's handwriting, called his attention to the similarity of certain letters, the spacing of the words, [fol. 61] and said, "Wan, now we know that you wrote that," referring to Sandberg No. 14; and defendant answered "Yes" and told him he wrote it; then the major said, "Now, this stub in this book," again calling his attention to the similarity of the different letters, "tell me who wrote that;" defendant took them all in his hands, looked at the check book; then some further conversation; they to Sandberg Number 14, each one he was looking at; witness does not know which ones; Wan said, "I write that one, too"; then he looked at the check book; then some further conversation; they pressed him for an answer as to who wrote that; he looked at it for some time, probably two or three minutes before he answered, then said, "Well, I think I write that"; the major said, "I don't want you to tell me what you think; you know whether you wrote it or not"; then he said, "I write that," referring to the writing on the stub of the check book; and thereupon, over the same objections and exception of the defendant, the check book with the stub is admitted in evidence, together with the photographic copies of the handwriting used in the above conversation, and exhibited to the jury; the witness being asked how long they remained in the mission house questioning Wan that night, says they left somewhere around four o'clock in the morning; Major Pullman left somewhere around midnight; defendant and his brother were taken to No. 10 station house Sunday morning; witness saw him Sunday evening, probably 7:30,

when Inspector Grant, Detective Kelly, and a Chinaman by the name of Wang, and witness went to No. 10 station and had a talk with defendant and his brother; about one o'clock the previous night, when Detective Kelly was questioning defendant, witness thinks about the check, and defendant just sat there looking at him without replying, the witness said, "Why don't you answer Mr. Kelly? Why don't you tell him what he asked you?" Defendant turned to his brother and commenced to talk, said something in Chinese, and witness said, "Stop that," rather abruptly, "if you are going to talk to Van, talk in English," and Wan picked up a coat hanger off the table and attempted to strike witness, just partly raised it up, and witness just reached over and sat him down in his chair, and said, "Stop that; we don't want anything like that, and we will not have it"; on Sunday night defendant had expressed a desire to talk to K. S. Wang by himself; he was allowed to do so; at one time Kelly and witness came out of the room and left them in the sergeant's room at the station house with Inspector Grant; and then the inspector came out, and when we were called back in defendant made certain admissions that he knew about the murder; in fact, he said he was present; and being asked to give details counsel for defendant renewed his objections to any confession or admissions made by defendant on the ground already covered, which objection was overruled, and the defendant allowed an exception; there were present Inspector Grant, Mr. Kelly, and witness, and he thinks Wang in the sergeant's room at No. 10 station house, and the defendant said that he witnessed the murders; that Wu had killed Wong and Mr. Hsie, and a Chinaman by the name of C. H. Chen had killed Mr. Wu; and when pressed for details said he was tired, wanted to go to sleep, would talk no more tonight, see him to-morrow, and he would tell [fol. 62] more about it, and we left him. Inspector Grant and witness went to No. 10 and talked to him Monday morning, asked him to give details; and, over the objection and exception of defendant, witness said that defendant, after a little talk, expressed a desire to go to the house again after witness had asked him the position of one of the men Wu had killed; could show witness better at the house; and we went to the house and he went over the whole story; said bade Dr. Wong and Mr. Hsie good-bye on the 27th, left the house, and rented a room at the Harris Hotel; that Mr. Wu was the only one in the mission that knew he had not returned to New York; they had a scheme on foot to get the check from the mission house check book; get some of the mission money; went over the details, showing where each man stood; Wu took out the check book from which he had torn the check on the Tuesday before, and Wu came to the Harris Hotel on Tuesday, telling defendant he had gotten possession of one of the checks; that Dr. Wong had missed the check and was very angry about it; had called the police, and Mr. Wu thought Dr. Wong blamed him, Wu, for the loss. Mr. Wu produced the check book, and at his suggestion defendant said, "I write it out for \$5,000," and Wu took the blank check, he thought, from his pocket, put a date on it, and stamped it, and then he went down in the kitchen; defendant filled out the check for \$5,000 with a pen Wu

handed him, but which he thought belonged to Hsie, and they had some conversation about going to the bank and getting the money; then Mr. Hsie came into the kitchen; witness said that at that time, before he started about the killing, defendant was asked a question by Inspector Grant and again by witness about Chen; does not recall just what inspector's words were; but witness said, "Wan, you know how this happened; you put in a man by the name of Chen in it; I know there was no Chen; you are the man that you are placing here in the story as Chen"; defendant thought a minute, and said, "Yes, I will tell you the whole truth now"; he said, "Chen was not in it"; defendant went on to say that when Hsie passed through the kitchen and his back was to Wu, Wu fired, and described how Hsie walked or partly ran towards the furnace room, Mr. Wu after him, and there he heard one or two more shots; Wu came out of the furnace room and closed the door between it and the kitchen and sat down; thinks he broke the revolver, reloaded it, got some shells out of the kitchen cabinet, and put it on the kitchen table; sat there without speaking for several minutes; both kept quiet; in probably twenty or thirty minutes some one else came into the house, and Wu said, "Here comes old Wong"; in several minutes Dr. Wong came downstairs; seemed to express surprise at seeing defendant there, because he said, or started to say, "Hello, Wan, you here." Before he could reply, or hardly before Dr. Wong had finished, Mr. Wu shot at Dr. Wong, who turned and ran up the stairway, Mr. Wu after him, and defendant heard something fall, something break like glass, one or two more shots, can not tell just how many, and then quiet; some little time before Mr. Wu came back downstairs; when he did so, he laid the revolver on the kitchen table and sat back for some time without saying anything. Defendant said then that he felt that he "spoke bad"; Dr. Wong was his friend; felt very bad; did not feel like talking. This pistol was lying on the table, and he reached [fol. 63] over and picked it up in front of Mr. Wu. Thereupon counsel for defendant objected particularly to this part of the confession, inasmuch as it deals with pending indictment, which objection was overruled and defendant allowed an exception. Witness said that defendant then said he broke the gun in front of Wu to show there were no loaded shells in it; thinks he said Wu had objected to shells when he came downstairs or before he came down; defendant played with the gun, all the time thinking he would have to do something; got up and walked back and forth, and as he went by he picked two cartridges out of the drawer of the cabinet and came back and sat down at the table, stuck the gun under the end of the table and inserted two shells; there was some talk then about the check, they quarreled a little about who should go to the bank. Wu wanted defendant to stay in the house, which he did not like to do; there were dead men in the house; was feeling cold; but finally agreed to Mr. Wu's proposition that he stay in the house; made some remark to Wu about the furnace needing attention; and Wu went in the furnace room, looked at the furnace, followed by the defendant; Wu started to walk back, defendant stepped to one side and let Wu pass him, and as he passed defendant turned and shot him, and when

he fell shot again. Defendant identified the handkerchief already admitted in evidence as Dr. Wong's.

Witness, with stenographer at police headquarters and Detective Kelly, on the following Tuesday morning went to No. 10 station and saw the defendant, to get the statement in writing, as he had given it the day before; advised him it was not necessary; any statement he made would have to be voluntary and would be used against him, and he expressed willingness to make it; witness asked him to tell the story in his own way, and defendant said, "No, you ask questions, I answer it better." Witness asked him questions based on the story he had told the day previous, and that was put down in the statement, which was then taken down in Station No. 10, Tuesday morning, February 11th, and the next afternoon, at the jail, defendant was asked to read the statement; said he did not feel like reading it, and asked that it be read to him; it was read to him, he said that was practically his story, did not wish any changes, signed it, and on further request initialed each page separately. Upon witness being shown a paper identifies it as a statement signed by defendant, "Burlingame No. 5." In response to questions of defendant's counsel, witness says when he went to the jail defendant was sitting propped up in bed, sick all the time, then and ever since he had been brought back from New York; but would not say just how sick; it was not dangerous; does not presume he knew they were coming down that day to get him to sign any papers; had told him when he made the statement would bring it down and let him read it, and if it was correct and was the statement he wanted to make, would ask him to sign it; when they took the statement down, his brother was in the cell with him; he was not in the cell when it was signed; was not chased out; as a matter of fact, at that time neither was in a cell, they were in one of the small rooms over the jail office, not over in the wing with the other prisoners; very positive about that; cannot possibly be mistaken.

Witness, being asked if "Burlingame No. 5" is in the same condition now as when the defendant signed it, states is not sure the [fol. 64] backing was on it; the statement itself was loose sheets without the clips on back of them, otherwise the same; cannot say why it was not bound up; was instrumental in procuring it, but not in taking it in shorthand, typing or binding it; has been most of the time in the hands of the property clerk and from there to the district attorney's office.

Witness has been on the force since March, 1896; lieutenant of detectives since September, 1919; was detective sergeant at the time of the investigation of this case; is a fact promoted after investigation, but it was never intimated to him that there was any connection. Witness does not recall the name of the New York officer who accompanied him to Mrs. Bartels' house on the occasion above referred to, does not recall how he was dressed, or how Kang Li was dressed, though he came back with witness on the train and was in his company from midnight the preceding Saturday until ten or eleven o'clock Sunday, and saw considerable of him the whole of the week; did not know Van at that time, but had photograph of Wan taken

from the mission house; does not think Kang Li gave it to witness. When they entered the room, Kelly and the New York man looked Van over, and witness paid more attention to Wan; there was conversation in the room, but does not know whether can state what it all was; had revolver in outside overcoat pocket, and hand in the same pocket, as a matter of precaution when in the room; did not know that defendant had committed any crime, but did not purpose to take any chances, and searched defendant in his bed for a gun; was in the room probably a half or three-quarters of an hour; not positive defendant had gloves on, but thinks he did; defendant had money, but cannot say how much, maybe two or three dollars, might be more; did not count it; ran into it when looking his clothes over for a gun; did not care whether he had a nickel or \$1,000; was not satisfied that the gun in the mission house was the only gun in the possession of the man who committed the murder; does not recall a pocketbook under his pillow; it may have been there; nothing had been said at that time about a muffler; some time during the following week attention was called to the fact that there had been a coat, hat, and, witness believes, a muffler, seen hanging on the hall rack in the mission house. On entering the room, witness announced they were detectives from Washington, and believes the New York man threw his coat back and displayed a badge; not positive; search was made almost immediately on entering; noticed no coolness between Kang Li and defendant; the former shook hands with defendant and Van. On the train back to Washington, witness took the address which defendant had written for Kang Li on one of the pages of a small note book which Li had taken from his pocket; later witness took the book out of Li's hand, saw what it was, said he wanted the address, and witness took his knife and cut out the part with the address of Wan on it, to get a specimen of defendant's handwriting; took defendant to the 15th Street house under instructions of his superior officer, and, among other reasons, had no suitable place elsewhere to take and talk to a man with any privacy, and because of his apparent physical condition; witness being asked if he could tell of an instance in his experience in the police department where a man was treated like this man was and taken to some place other than where people are usually taken when arrested, the [fol. 65] district attorney objected to the question as immaterial, which objection was sustained, to which action the defendant prayed and was allowed an exception. The house was not occupied by the police at that time, but by a clinic; a large room with a railing around part of it, quite a number of chairs, a small room leading off, which witness thinks is an X-ray room, etc. Did not want the newspaper men talking to or interfering with defendant; did not want any interference from them or anyone else; wanted him to themselves until could complete investigation; would not say wanted him to get confession out of him; at the time of getting the handwriting specimen knew nothing of the check or stub in the book, just came to witness might need some of his handwriting. After he got to Washington, asked him two or three times if he wanted anything to eat, and said "No"; may have had something when he

went to the hotel, but witness does not know; when taken to the 15th St. house, was questioned by witness, Major Pullman, Inspector Grant and Kelly; he was sitting most of the time; was asked to stand up when the Riggs Bank men came in to look at him; during the evening he said he felt tired and would like to go to bed, and in a few minutes was taken to the hotel, around 10.30 or 11.00 o'clock; most of the questioning was by Major Pullman, with reference to the time he left Washington, and both the major and inspector questioned him regarding the check; thinks Grant asked him if he was the man who had taken the \$5,000 check to the bank, which he denied, then he was told bank men would be sent for; he said he was never in the bank; would sit for sometimes ten or fifteen minutes, and sometimes as long as half an hour while we were waiting for the bank men and would not utter a word. A good many times during the course of the investigation he would ask to be left alone, but we did not leave him alone, and we would ask him a question and if it was rather pointed he would say he was tired, to leave him alone, "I will talk no more to you." Sometimes would be twenty or thirty minutes before he would answer or say a word; asked him about the checks, about his movements, to explain why he bade everyone in the mission good-by on the 27th, why he went to the Harris Hotel and registered for a room instead of going to New York; why he had not got the \$30.00 check cashed which Mr. Wu gave him; to explain his brother's movements; why he said Van was never in Washington, when Van had admitted he was here. This was not all that night; that night defendant insisted he was innocent of any wrongdoing; knew nothing of the death of Dr. Wong until he saw an account of it in the New York papers; witness took the check out of his cardcase that night at the clinic; thinks he saw defendant Monday forenoon at the Dewey Hotel; may have talked to him some about the case, did not question him much, nothing of importance developed; cannot tell what witness said to him on that day about the case, but either Grant or Kelly was with witness; if you asked defendant how he felt, would say his stomach felt bad; on several occasions witness saw trays with dishes in the room, with some uneaten food on them, and would ask defendant what was the matter, did not taste good? He would say no, tasted some of it, did not like it, and ate something else. During the week he did express a wish to see his brother, never pressed it; sometimes would see defendant in the morning, and then again in the afternoon; cannot say whether did so on Monday; cannot remember [fol. 66] questions witness asked him on that day; asked him the same questions over and over again a great many times without getting any answer at all; asked a great many questions at different times all during the week; sometimes would get answers, and he would say didn't know anything about the check, sometimes would not answer at all; did not ask him if he wanted doctor on Monday. Invariably the police officer on guard was in the room when witness got there; did not advise him of his rights or that what he said would be used against him, because did not see where that would assist in investigation, and it may have been because witness's idea was



that would prevent him from talking; did not see any occasion to advise him along those lines at that time because did not feel— The court interposed as follows: "Well, one very good reason was that he was not under any obligation to tell him that." Thereupon the following ensued:

"Mr. O'Shea: Now, if the court please, we respectfully ask an exception to your honor's remarks.

"The Court: There is no use in pursuing that.

"Mr. O'Shea: In the presence of the jury?

"The Court: You may the exception.

"Mr. O'Shea: We believe that he did have the right to be so advised.

"The Court: Your belief happens not to coincide with the law.

"Mr. O'Shea: That is a question to be argued.

"The Court: Well, I will dispose of it now.

"Mr. O'Shea: We reserve an exception.

"The Court: You have it already.

"Mr. O'Shea: Your honor rules that he does not have to answer that question?

"The Court: That he does not have to do what?

"Mr. O'Shea: To answer the question.

"The Court: I hold that it made no difference whether he told the man what he said would be used against him or not."

The court ruled, however, the witness might answer the pending question if he wanted to, and the witness replied that he did not feel he was under any duty to advise the defendant. Witness did not let defendant see his brother and in that way hinder an investigation. Saturday evening, about seven or eight o'clock, took defendant to the mission house. defendant sat in the parlor a few minutes until Major Pullman arrived; then we started around the house and stopped at the dark spot where Dr. Wong was found; this had already been described to the defendant, and when he came to the house he was familiar with that, and where the other bodies were found; that night he stopped there and asked some questions, asked how many times he had been shot, about the coat, and then went down stairs, and practically the same thing was repeated down there; is not a fact that there were suggestions made to him when the place of Dr. Wong's body was reached, or he was asked to tell how the thing happened; he asked some questions about how the lamp had got broken in the back room, does not recall whether they were answered, and asked questions where the bodies were found in the basement, where the revolver was found, and then witness left them and went to the Dewey Hotel and brought Van back, in about half [fol. 67] or possibly three-quarters of an hour; got back about 10 o'clock; defendant had been promised would let him see his brother; does not think had been promised to let him see his brother at any specified time; asked if defendant during the course of the evening did not ask to be permitted to see his brother, witness says he did, two or three times, and was told he could see him; defendant had continuously asked to be let alone and not bothered, whenever he



was asked a pointed question and if he answered it it might implicate him or embarrass him; he would say, "Let me alone, I talk no more to you to-night, I don't feel well;" this was done repeatedly whenever he was pressed for an answer to a pointed question; sometimes we would leave him alone, and witness sometimes stayed there and talked at him for a while until we got tired of it, and then we would leave him, or talk about something else, and get Wan out of his fit of temper. He got in a temper quite often when he was asked embarrassing questions; witness would not say he was sick; told defendant witness thought his sickness was more in his mind than in his body. Van was brought up to the mission house, so the officers could talk to them together; defendant expressed a desire to come to the house, and we thought it a good time to put them together and talk to them together; before that we would talk to Van in one room and go to the other room and talk to defendant; thought the mission house as good a place as any to get them together; wanted to do everything we could legitimately. Witness does not remember Van expressing a desire to go to mission house, did not tell him Van would see his brother there; told Wan he could see his brother, but does not know whether at that time any time was specified. Asked if did not bring Van up there to see his brother and had Kang Li in the closet with the thought of getting an admission, answers, "It was always with the thought in my mind to complete the investigation—to get the truth, to get the facts." Asked if it was not always a thought in witness's mind to get a confession, says not necessarily a confession, but the thought was always in witness's mind, day and night, during this investigation, to get the truth, whether it was a confession from him or from somebody else, or an admission from him or somebody else; that was the uppermost thought in witness's mind at all times. Defendant and his brother did not talk in Chinese until later, about one o'clock; earlier in the evening, because of the annoyance of the newspaper men outside and ringing the doorbell and trying to get in the windows, and telephone bell ringing, a great deal of noise, it became necessary to take the two brothers up to another part of the house; Wan and Van were together almost continuously from the time they first met until around four o'clock in the morning; up on the third floor where they were taken were present the witness, Inspector Grant, Major Pullman, and Kelly, and the headquarters stenographer, named Laws; the questioning was kept up there, repetition of what took place before; talking to him, questioning; Grant stretched out on the bed a few minutes when witness was talking with defendant; possibly defendant did repeatedly ask to be let alone that night, in the same way that he had whenever asked an embarrassing question, and he got angry and showed his temper; witness and Kelly questioned him while Grant was sleeping for four or five minutes, around [fol. 68] one o'clock, and when he awoke, started questioning defendant as he did from time to time, off and on, all evening; defendant was not permitted to sleep or to go back to hotel, did not ask either to sleep or to go back to hotel; may have been 5.20 Sunday morning when the formal entry of arrest was made on the blotter in

No. 10 precinct, and it is a fact that these men had been under questioning from 7 o'clock the preceding evening until 5.20 o'clock, if 5.20 is the time, but witness's recollection is it was a little earlier than five; Wan was not continually talked to all this time; Kang Li got tired, was not accustomed to the long hours the police were in the habit of working. When Major Pullman pressed for an answer when certain photographic copies of handwriting were exhibited to the defendant, and he was asked if that was his, and he said "No," looked at it for a while and then finally said, "I think so." Major Pullman said, "Wan, don't tell me what you think, you know whether you wrote it or not, tell me if you did write it, or did you not"; defendant hesitated a few minutes and said, "Yes, I write it"; witness's recollection is Wan was shown photographic copies of his own signature, the original of his own, and also the stubs in the bank book, by Major Pullman. On the preceding Friday Van had told them he went to the bank with the check, and when defendant, in response to Inspector Grant's question to leave the murder out of it, just tell who went to the bank, said that if you found the man that went to the bank you found the murderer, the Inspector said, "Well, we know who went into the bank; your brother went into the bank with the check," defendant said it was a lie and would talk no more. The substance of what the inspector said was "For the time being, leave the murder out of it, never mind about the murder; tell me about the check; who went into the bank and tried to get the check cashed?" And he might have said something to the effect that what he meant was that the murder and check were two different propositions and not necessarily the same man did both. Witness showed him the bloody handkerchief in the house on Monday evening so he could tell the story better, and where each of the incidents took place. In the room on the third floor early Sunday morning, when Mr. Kelly was pressing defendant for an answer, the reason witness stated to him, "Why don't you answer, why don't you tell Mr. Kelly what he wants," was because defendant had been asked several questions and he was in a rather embarrassing position; if he answered the question he would have to implicate himself and he refused to answer, and witness said to him, "Why don't you answer the question one way or the other or tell Mr. Kelly what he is asking you"; being asked if witness was not trying to force an answer out of him, witness replied, "You might put it that way"; witness asked him, "Why don't you answer? Answer Mr. Kelly's question; why don't you tell him what he asks you?" It is not a fact that defendant grabbed the coat hanger to protect himself; witness did try to force an answer by asking Wan to answer the question, but not by any physical force or anything of that kind. When witness said on yesterday that defendant was frequently pressed for details, it means he was questioned; we would say, "Just tell how this happened; where was Dr. Wong and Mr. Hsie and what time did he come in?" On Tuesday morning, when the statement was taken down, witness asked questions in obtaining the state-[fol. 69] ment based on the story defendant had told on the previous Monday; witness recalls on Monday at the mission house de-

fendant said something about having seen a picture of where the bodies of Wu and Hsie had been found; was not shown the pictures by witness; probably in the house that day a couple of hours. Inspector Grant also questioned the witness, but witness did most of the talking; when statement was obtained on Tuesday, witness asked the questions based on his recollection of what he had told witness the day before in the mission house. On Saturday evening when they went to the mission house with defendant, one light circuit went out while they were there, and witness repaired it; light was not put out on purpose; found a good fuse down in the kitchen cabinet; lights were out probably ten or twenty minutes. The house had been left practically as it was found the night the bodies were discovered. From remark he made, witness judges defendant had been shown all the pictures, a remark he made indicating the position of something; witness did not try to force defendant, but simply asked him to answer questions; no force was used; witness did try to force an answer out of him by asking him to answer the questions, but not by physical force or anything of that kind. The defendant was in better physical condition than any of the officers in the room; witness did not have a doctor four times that week; asked if Wan did not have a doctor four times that week, witness stated that was more as a precaution, to keep his promise to Wan, to see that he had every medical attention and to gratify every wish, almost everything he desired. Witness had promised Wan in New York he would see he got everything he desired, and until he began to pick up at the hotel witness continued to take him fruit which witness paid for out of his own pocket; witness saw Wan down there fifteen or twenty times, two or three times a day, and talked with him, not about the case, but simply went there to keep his promise to him that as long as he was in need of anything he would see he got it. Wan had some stomach trouble, but his life was never despaired of. Always when Wan said he did not feel well or was tired and wanted to go to sleep, witness thinks without exception his wish was acceded to.

Asked if in the course of his direct examination it is not a fact that witness stated defendant was pressed for details respecting the alleged crime, answers "Yes," meaning that he was questioned; did not mean he was taken up and pressed, but that he was requested for the details of the crime. "We would say, 'Just tell how this happened. Where was Dr. Wong and Mr. Hsie, and what time did he come in?'"

Witness next saw defendant Monday morning, February 10, at the station house; had talked to him at station house on the previous Sunday morning and Sunday evening; Sunday evening about 7 or 8 o'clock K. S. Wang was with him, and the following morning, Monday, defendant stated he would like to go to the mission house, and could explain everything so much better; Inspector Grant and witness were present; he was taken to the mission house Monday somewhere between 9 and 11 in the morning, and he went over the situation in detail: being asked if it is not a fact that witness asked defendant questions and then gave answers and witness put

[fol. 70] them down in question and answer form, says, "No," but a great deal of it was answers in reply to witness' questions; defendant explained a great deal of it in detail, going over the story, and if some point was not exactly clear and witness did not understand his explanation of it asked him questions and made a few skeleton notes to assist his memory in the statement. The stenographer was brought the next day, and on the strength of the story, the notes witness had, and the story Wan had told witness and Grant Monday, the stenographer was taken to No. 10 station house and defendant was asked to make a statement and he was asked questions, and it was in question and answer form. On the Monday when the notes were taken by witness defendant was taken over — the house and down in the basement, and, of course, passed the spot where Dr. Wong's body had been found, but witness does not recall stopping there, and "we went down in the kitchen; and the whole thing was talked of and enacted in the kitchen without going over in the house"; if there was something witness did not understand, would ask some questions and make notes of the important parts of it and the rest of it witness trusted to memory; witness had the handkerchief in his pocket and showed it to him at the kitchen table (this handkerchief had the name "Wong" written on it in ink). Defendant asked witness where he found it, and witness indicated the step near the foot of the stairway leading from the kitchen upstairs, and defendant said he thought it was the same handkerchief Dr. Wong had in his hand that night when — shot him, and he ran upstairs; witness recalls defendant saying something about having seen a picture of where the bodies of Wu and Hsie had been found; was probably in the house that Monday with defendant an hour or two, and Grant was there when the notes were made and questioned the defendant some; witness thinks it likely defendant was shown the pistol; he expressed a desire to see everything, and he asked questions about everything about the place during the week; after talking with him at the mission house that day took him back to the station house that afternoon, and on the following day—Tuesday, the 11th—witness, Detective Kelly, and Mr. Laws, the headquarters stenographer, visited him again at the station house, and asked him "if he cared to make a statement," and witness asked him the questions from witness' recollection of what he had told witness, and he gave the answers. Witness did not use any notes at all when questioning him. Being asked if he had not memorized part of the written confession, witness replied that he had not; that it would be impossible to remember everything that was said and everything that was done at that time, "but I suppose there were lots of things that were made in that statement that I have not touched upon, and I may have elaborated a little."

From a remark that defendant made on Saturday night in the mission house witness judges he had been shown all the pictures; it was a remark in answer to a question about having seen the pictures, to indicate the position of something; witness's idea in treating defendant with extreme kindness was not for the purpose of trying to get him to make any incriminating statement; one reason

was his promise to him. When Kang Li was in the closet does not [fol. 71] recall any one saying to defendant he was hearing ghosts; that they heard nothing, he must be hearing noises.

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Thereupon M. M. WOODYARD, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is a member of the Metropolitan police force, and on February 3, 1919, was detailed to the Dewey Hotel in charge of the defendant from 4 o'clock until 1 midnight from Monday night till Friday night the same week under orders not to say anything about the murder case; during that period defendant was seen by Major Pullman, Inspector Grant, Lieutenant Burlingame, and Sergeant Kelly. Witness had orders not to let anyone else see defendant; witness did not question him about the murder case, and did not talk to him on any matter other than this case. Defendant ordered food and got it; was never denied food; no force used on defendant to witness's knowledge.

On cross-examination states received orders that no one was to see defendant from Officer McKinney, whom witness relieved and who was working from 8 until 4; Officer Gallimore was working from 12 to 8. Defendant occupied room 22, second floor, back. Can not designate the days when any particular man was there and for how long he stayed; the doctor was called there one night as witness was leaving; does not recall what night it was; witness was inside the room except when the major or detectives came; left the room when questioning began, just outside the door; defendant complained at times.

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Thereupon DALTON E. GALLIMORE, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is a member of the Metropolitan police force and was assigned to the Dewey Hotel in January, 1919, in charge of the defendant; begun on a Sunday and lasted a week; was there seven days from midnight until 8 o'clock a. m. Detective Kelly and Mr. Grant saw the defendant one night between 12 and 1 o'clock for about 15 minutes; they were the only ones who saw defendant in addition to the witness; no force used on defendant during that period to witness's knowledge.

On cross-examination says was not in the room while questioning was going on, but had orders to be in there when no one else was there; the night when the officers visited him between 12 and 1 o'clock was the latter part of the week. One morning about the middle of the week defendant asked witness to call a doctor. He was not permitted to see anyone; did not ask to; his glasses were broken the first part of the week.

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Thereupon O. A. McKIMMEY, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that

he is a member of the Metropolitan police force and on Monday, February 3, 1919, was detailed to the Dewey Hotel in charge of defendant, and was there until Saturday, February 8th; during this time he made no reference to the murder case; had orders not to; while witness was there Major Pullman, Detective Kelly, and the police surgeon saw defendant, the latter once; defendant and witness had lunch together every day, the former signing the various checks.

[fol. 72] On cross-examination witness said his trick of duty was from eight to four; thinks the doctor was called Tuesday or Wednesday; came with the major; remembers Mr. Kelly, defendant, and witness talking together Saturday morning, not in reference to the case; Kelly asked him how he was feeling and about most everything; defendant was in bed about half the time witness was there; defendant complained of his stomach all along.

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Thereupon CLIFFORD L. GRANT, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is inspector of police; investigated the murder at 2023 Kalorama Road; first saw the defendant in the house on 15th Street Saturday night following the murder, about six o'clock, when the major questioned him about when he left Washington; witness went to the mission house the following Sunday with Major Pullman, and a check book, "Dent No. 1," was found on the second floor, back room, occupied as an office by Mr. Hsie, on a shelf up against the wall, with several small books on top of it. At the Dewey Hotel, about the Thursday or Friday following, had a conversation with defendant; asked him who went to the bank, witness saying to him, "That has nothing to do with the murder; tell me who went to the bank," and he said, "If you get the man who went to the bank, you will get the murderer." Thereupon counsel for the defendant moved that the statement just quoted as having been made by the defendant be stricken out, on the ground that it was not shown to be voluntary and was made in reply to statements by the police officers in the nature of an inducement. Thereupon the court denied the motion, to which action defendant prayed an exception, which was allowed. Witness then said to defendant, "I know who went to the bank; your brother, Van, went to the bank, because he just told me so," and Wan pounded the table and said, "It's a lie," and would talk no more. Saw the defendant the following Saturday night at the mission house; took him downstairs at first, then up on the second floor, where Kang Li was in the closet; Van was brought in; nothing developed, and he took both to the third floor and asked them a number of questions; Major Pullman showed him handwriting and comparisons and asked him to tell who wrote that stub. Thereupon counsel for defendant renewed his objection to this conversation, as previously made, which the court overruled and allowed the defendant an exception; the witness continued: "Defendant said, 'I think I wrote it,' referring to a stub in that



check book for check supposed to have been written for \$5,000, stub No. 24, T. T. Wong, \$5,000; the major showed him other signatures for comparison, at which he looked very closely for a while and finally says, 'I think I wrote that'; the major said, 'I don't want you to think, I want you to make sure,' and after some deliberation he says, 'Yes: I wrote it.' "

Recognizes Sandberg numbers 12, 13, and 14 as the comparisons the major had; that is, copies of them; does not know whether these are the exact ones, but the major called defendant's attention particularly to the vertical letters; looked at them for quite a while; major left almost immediately afterwards; witness went to sleep for a while, woke up with a start, and saw Mr. Burlingame putting defendant in a chair, saying, "Sit there; we do not want any of that"; took defendant to No. 10 station about five o'clock in the [fol. 73] morning; saw him that evening about six or seven; the witness, a Chinaman named K. S. Wang, Burlingame, and Kelly were there.

Thereupon the following occurred:

"Q. Will you tell me what occurred on that occasion as nearly as you can recall?

"A. There is where this man said that he wanted to tell his story, and he told me about seeing all three of these men killed.

"Q. What was that?

"A. Wan. He said——

"Mr. O'Shea (interposing): We make the same objection.

"Witness: He said he took no part in the killing.

"Mr. O'Shea: We make the objection to the statement on the ground that the voluntary character of it has not been shown by the Government, the same objection that we made before. The court thereupon permitted the witness to be questioned as to the means used to get the statement. Thereupon in response to questions of counsel for the defendant witness stated this was the Sunday after the Saturday they had defendant at the mission house, and he had already made certain admissions there. Sunday evening at the mission house witness was appealing to the good side of his nature; asked him several times to tell witness the truth about this thing; finally said to him, 'If you are guilty and your brother is innocent, now is the time to tell it; I want to know'; then it was he admitted seeing all three men killed; his brother was then in a cell in the back part of the building; witness started the conversation first; defendant was so reticent that witness asked K. S. Wang to talk to defendant, and he did so in Chinese; witness told Wang, 'You are one of his countrymen, now you talk to him, and see if you can get him to tell anything about this crime.' Witness made the statement to defendant about his brother before Wan talked to him in Chinese; made it in the presence of Wang and defendant; appealed to the better side of his nature; 'told him that things looked pretty black for him, that we had talked this thing over and the developments showed me that he knew more about the crime than he was telling, and I asked him for the truth'; told him 'the investigation so far looks pretty black for you; tell me the truth'; this in the



presence of only the defendant and Wang; went over practically and rehashed all the case as far as they had learned about it and related all the circumstances against him; told him a lot of things, but never offered any inducement, because witness has had too much experience in that line.

"Q. And this was what you meant by saying that you appealed to the better side of his nature—by telling him that the investigation looked awfully black and that he had better tell you the truth?"

"A. Yes; I thought if he told the truth about it, it would be the proper thing for him to do under the circumstances."

Defendant knew witness was a police officer and he was then in the police station in custody.

Thereupon counsel for the defendant again objected to any admission or confession made by the defendant after the foregoing conversation, on the ground that such a statement would be involuntary; thereupon the court overruled the objection and allowed the defendant an exception, the court saying: "I think you are right [fol. 74] about the words, but I do not see that held out any inducements to him; I do not think the words used possibly can be construed as holding out an inducement." The witness continued: Defendant then told witness he saw all three killed, but did not take any part in it; that a man named Chen had killed Wu, after Wu had killed Dr. Wong and Mr. Hsie.

The next day, Monday, about 10 or 11 o'clock, witness had conversation with defendant in the kitchen of the mission house, with Detective Burlingame; being asked what occurred then, counsel for defendant was permitted to inquire, and the witness said they asked the defendant if he would not go to the mission house and show them how the killing was done; "we bundled him up very nicely and took him over there"; Mr. Burlingame said, "tell us where Chen was," and witness put his foot on Burlingame, looked defendant in the face and said, "there was no Chen here, was there? Tell me what you did," he hung his head and said "I killed Mr. Wu after Wu killed Mr. Hsie and Dr Wong." Thereupon, counsel for the defendant renewed his objection to this testimony and moved that it be stricken out on the grounds previously stated, which objection and motion were overruled, and defendant allowed an exception. After defendant went into some detail about how it occurred, witness left. Practically every admission he made was in answer to question witness had asked himself; "had gotten practically everything that I thought that was important," and left the details to Burlingame and Kelly.

The witness being shown the card, "Dent No. 2," identifies his initials thereupon, and says it was handed to him by the late Detective Sergeant Wilson; the card being offered in evidence, counsel for defendant objected to its admission on the grounds previously stated, which objection was overruled and the defendant allowed an exception. While defendant was at the Dewey Hotel, witness saw him served with food, produces a number of orders for food showing each and every article Wan got; saw defendant sign some of them;

recalls that on Sunday night, about 10 o'clock, after he made his statement, defendant asked for and was given some pie.

On cross-examination witness states that he went to the mission house the night the bodies were discovered; the coat had been taken off the face of the body in the reception hall; saw a card of Detective Bradley's lying on the library table; does not know what became of it; did not learn the importance of it until after witness left the house for good; there was a couple of dark derbies on the hatrack; looked like they had been there some time; the check book which Major Pullman found was with other check books, neatly filed as if they had not been disturbed for some time, on the shelf; this was on Sunday, about five or six o'clock in the evening. When witness first went to the house, saw some broken glasses there; they are in the custody of the police department now, picked up the night the bodies were found; first saw Kang Li that same night on the first floor, in the room where the broken fixtures were; witness saw the pistol down stairs, lying on a chair, right close to the body, and the major and witness deemed it advisable to send Kelly and Burlingame to New York, prior to which had talk with Kang Li; everything led them to send them. The house on 15th Street, where defendant was taken, was a clinic of the health department.

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[fol. 75] Thereupon GUY E. BURLINGAME, a Government witness, having already been sworn, was recalled, and said that in his previous testimony he stated that the statement was read to the defendant in the jail, in the room over the jail offices, but after thinking it over recalls it was in the cell.

On cross-examination states that he was very positive in his previous examination, but after thinking it over recalls it was in the cell; when counsel had asked him the question, had not given the matter any thought; recalls that he testified was very positive it was signed in the room over the offices in the Red Cross room and that he could not possibly be mistaken about it.

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Thereupon the cross-examination of CLIFFORD L. GRANT was resumed, as follows: Witness has been on the police force for 27 years, a detective since 1905; that this defendant was sent to the Dewey Hotel because his health was not the best and he wanted to talk with him and did not care to put him in a cell; did not want him to undergo that hardship; asked if permitted anyone to communicate with him, says he did not ask to have anyone communicate with him; gave him newspapers, but none with the account of this crime in it; asked if defendant did not express desire to see his brother, says he did not know his brother was in the city, and the question being repeated, says he said he would like to see his brother; asked if he were permitted to do so, says when he expressed the desire his brother was not in the city; first expressed the desire Sunday afternoon at the hotel; brother came shortly after that, and witness did not comply with the request because defendant did not follow it up; witness gave orders that he was not to leave the room; kept guards there; the newspapers he saw had accounts of this case cut out of them, and

asked the reason therefor, the court said it would not have the slightest bearing upon the only issue on which the witness was being examined, and over the objection of counsel for the defendant, refused to permit the witness to answer the question, to which action of the court defendant was allowed an exception. The court then refused to permit counsel for the defendant, in questioning the witness, to refer to the building on 15th Street as a "clinic." Witness being asked if there was a reward offered for the apprehension of the man supposed to be guilty of this offense, the district attorney objected, and in response to the question by the court counsel for the defendant said he wanted to know whether it was paid to Mr. Burlingame or anyone else who testified in the case, and the court said as a matter of law it could not be, and overruled the question, allowing the defendant an exception. The witness continued: When the bankmen failed to identify the defendant, the latter was not informed that they had failed to do so; witness being asked would the fact of the defendant's conviction make any difference with respect to who would get the reward, if any offered, the district attorney objected, and the objection was sustained and defendant allowed an exception. Witness does not know whether Kang Li has ever been paid a reward in this case. When Major Pullman questioned defendant about the time he left Washington, the major told defendant it was impossible for him to leave at the time he said, at 8.15, January 29th, and he was shown by time-table that there was no 8.15 train to New York; witness did not tell defendant at 15th Street house that he was the one who took the money, [fol. 76] killed the men; that he wanted to go to Frisco and then back to China. The bank officials notified the police department about the check Thursday morning; witness sent Detective Wilson to the Riggs Bank Saturday morning, February 1st; witness being asked why he did not send the detectives who went to the bank to the mission house on Saturday, the district attorney objected, which objection was sustained and the defendant allowed an exception. It is not a fact that they were notified about the check on Thursday, January 30th. Witness was not so blunt in the case as to tell defendant at the 15th Street house that whoever cashed the check was the murderer; witness did not say that, did not put anything like that to him the first night; did not come at him and accuse him of the murder like a green policeman on the force two weeks; there is a little bit of tact about those things; and being asked if the same tact kept defendant confined in the Dewey Hotel for ten or twelve days, answers, "Well, experience." The first night defendant was asked if he had been to the bank with the check; was told that the members of the mission had been found dead, and on Thursday morning this check was presented to the bank. Mr. Burlingame took from the defendant that night a check, which witness saw, signed by Ben Sen Wu; witness saw defendant Sunday morning at the hotel about 11 o'clock; does not recall who was with witness; remained a half hour or so; defendant was lying in bed; perhaps went again that day with Major Pullman, asked him several questions about the case; made no suggestions about how it happened at

that time; cannot remember any conversation had with him that Sunday, "It is one of the hardest things for me to do, to remember those conversations." Told defendant he was the last man in the house; later during the week, in talking about the customs of the Chinese of getting coolies to commit murder for them, something was said about giving \$50 to somebody to commit the crime; just the custom of the country we were talking about; that was probably Wednesday or Thursday; on Monday Major Pullman asked defendant about his religion; cannot remember the conversation, because it was not the most important things witness wanted to talk to him about; most important thing was "these little circumstances that came up from time to time that we learned about, and I asked him about"; does not remember how many times the doctor visited defendant; witness talked with defendant's brother and would then go and talk with defendant about the things that asked his brother about, about the case—various conversations about various things; would sit and talk sometimes an hour or more, taken up largely with things defendant wanted to talk about. He was very much concerned about his brother and his brother about him; told him his brother was well; he wanted to see his brother, "but we told him that we would let him see his brother at the night time"; means time he thought it would be best to put them together; just kept them apart; did not think it was opportune, the best thing for the interests of the case, to let them see each other, for reasons of their own; did not want any conflicting statements or let them talk together in Chinese; asked if there had been any conflicting statements up to the time they were put together, says there had been very little statements of any kind, except on the part of Van, who gave the first light in the case when he said he went to the bank; [fol. 77] had been no statements before, conflicting or otherwise. At this point, in a discussion of an objection by the district attorney to the question, "And because there had been no conflicting statements was the reason you did not have the brothers together," the court said: "There is no doubt about the fact that the brothers were kept apart until the time came, in the judgment of the officers, when, in the interest of justice, they should be brought together."

"Mr. O'Shea: That is, in the interest of justice as they construed it, your honor.

"The Court: No; it is how the court will construe it; if it is beyond the proprieties you know the jury will be told so, but the mere fact that they kept the brothers apart is of no special significance in this case."

Defendant was taken to the mission house twice, on Saturday night, February 8th, and the following Monday. On Friday, February 7th, Van told witness he had been to the bank, and within the next fifteen minutes witness went to see Wan; asked him to tell witness who the man was that went to the bank; that it had very little bearing on the matter; did not have much bearing on the matter of the murder; asked him to tell witness who it was, and he said, "You say that it has not much bearing on the case; if you get

the man that went to the bank, you get the murderer," and then witness said, "I know who it was that went to the bank;" then he rolled his eyes around and said, "Who?" then witness said, "Van went to the bank and he told me so." Wan got viciously mad, pounded the bed and said he would say no more. Witness knew before asking him, from what Van had said, that the latter had been to the bank but did not tell defendant; the first remark Van made about the bank was, "they fool me," and he told witness this story about going to the bank at the Dewey Hotel; in this conversation had asked Van about the telegram he had received to come here; Van said he thought it was to get a job, and cried and told witness about their fooling him; cannot remember the entire conversation. Van did not say anyone went to the bank with him; after this conversation witness joined Burlingame and Kelley in Wan's room. Asked if he did not state on direct examination that he said to Wan, "Leave the murderer out of the case; make the check a separate matter; tell me who went to the bank?" says no; said exactly what just stated he said, that the check had no bearing much on the case, that the party did not get the money, that the check had no bearing on the murder, and defendant said, "You say that check has nothing to do with the murder? You get the man who went to the bank and you get the murderer." Asked if he made any efforts to see whether Kang Li went to the bank, answers, "No;" was satisfied when we brought Van back from New York that he went to the bank; defendant "expressed a desire" to go — the mission house; witness did not say on direct examination that witness was suggesting to Wan to go to the mission house, or asked him to go; that was on Monday morning, it was earlier than Friday that he expressed the desire; asked if it was not a fact that witness told him he would see his brother at the mission house, says, "Perhaps I did; yes." Asked if it is not a fact that all through that week, from February 1st to the 9th, when a statement about the check was made, witness, Kelly, and Burlingame would question him a half hour at a time, telling him [fol. 78] to tell how the thing happened, and shaking their fingers in his face, answers, "Well, we were talking with him sometimes a half or three-quarters of an hour, but at no time were we talking to him that long about the crime. \* \* \* We would branch off on some other subjects and then we would come back to the case; he was in bed most of the time, but lots of times he seemed pretty lively in bed. Was never at the Dewey Hotel after 12 o'clock at night; took defendant to the mission house that particular Saturday night because "we wanted to do everything we possibly could to close the case. It had been hanging for a long time, and we just thought the best thing to do would be to take him to the house, as he had expressed a desire to go to the house, and take him there on this particular night and let the two brothers meet and see what they would have to say." Does not know why the pillow that covered Hsie's face or the coat that covered Wong's face were not kept; does not know by whom the coat was removed. On reaching the mission house, took the defendant over the whole scene; showed him some bullet holes in the kitchen in the wall. Asked if witness did not

indicate where the bodies were and did not ask defendant if he knew anything about it and if he did not honestly answer, "I don't know anything about that, Mr. Grant," witness replies: "No; we watched him very closely; he said very little and looked down, and he says, 'It's too bad; I'm sorry.'" Showed him the precise spot where the bodies were found, and upstairs showed him where Dr. Wong lay, and the blood there, and the blood on the stairs leading up from the kitchen; told him evidently Dr. Wong had been shot on the stairs, because his handkerchief was found at the foot of the stairs and his glasses; does not know yet whether or not they were Dr. Wong's glasses; found no finger marks of any kind anywhere in the house.

"Q. And you found none anywhere?"

"A. Except that there were some blood smears on the outside front door; some smearing of blood on the pistol, but there were no finger marks; some smears made by the hand or the fingers; blood had splattered around the washboard in the kitchen and thinks probably some around the outer edge of the sink. The blood marks on the door were on the outside of the front cellar door, leading from the furnace room to the street, up the front cellar stairs; they were just near the knob; like some one had put his hand around the door [indicating how] and left it there."

Does not remember what kind of a lock there was on the door or whether there was a key. Attention was called to it first night "we visited the house," the night the bodies were in the cellar; they were on the door jamb above the knob, on the edge of the door, not the jamb, looked as if somebody had put their hand there on the door leading out into the street; it was on the outside; no photograph was made of it. If Mr. Sandberg took a photo of it, it was without witness's knowledge. Asked by the court how witness knew they were bloodstains, says because they were very plain smears, "it looked about one hand in there or four fingers," that had taken hold of the knob and opened the door; it was above the knob; looked just like hand smear, as if somebody had grabbed it; appeared to us that the man had opened the door with his left hand and put his right hand, which was probably bloody, on the outside of the [fol. 79] door, a bright wooden door, sort of cream color. Witness pointed out to defendant where Dr. Wong's body had been discovered, and how he was found, told him his face was all bloody and swollen beyond recognition. The major was with us all of this time, watching the man very closely, and we were going to let him do some of the talking, watching him for the purpose of seeing what effect, if any, the blood and the scenes of the crime would have upon him; watching him closely to see if we could glean something; he wanted to see the place and went there of his own volition; he signified his intention of wanting to go, and we took him there; we would show him bullet holes in the walls, the blood, told him about the water being hot, everything of that kind; told him practically everything there was; went through the history of the thing; asked him what he thought about it all, "What do you know about this?" and he persisted in saying he knew nothing about it; he had not been accused



outright of the crime, but told he was under suspicion; was led to believe that from the very first, and could readily see that he was under suspicion and suspected of having gone to the bank; had stenographer and had the brothers to meet there and wanted to know exactly what was said, to take it down then and there. Defendant was brought up to a second-story room about 8 o'clock; we all accompanied him, and we went over the entire case with him again; it was hard to remember what was said; cannot begin to remember it; remembers the major's questioning him about check, showing various comparisons of the handwriting, including that of Kang Li's book: "we did not state 'you killed these people' or anything of the kind, but just related these various circumstances to him and got him to tell us things by degrees." Did not remain on the second floor long because of the noises of the newspaper men; showed him over the second floor; told him in what room the check book was found, "the major had the book and all there; showed him where it was found and everything"; took defendant out of the front room, put Kang Li in the closet, and brought defendant back; knew of no coolness between Kang Li and defendant; thinks there was no light in the closet; the brothers exchanged greeting in Chinese and sat down.

"Q. After they sat down, what took place?

"A. It is hard to say what took place."

Asked them a number of questions; first thing witness wanted Van to do was to tell his brother he had told witness he went to the bank, and it was then that they went up on the third floor to get rid of the noise; and it was quite a while up stairs on the third floor before witness could get defendant to give his consent to have Van tell that he had been to the bank; there was a lot of pounding at the door while we were on the second floor, and we did not stay there long; cannot begin to remember what was said; Van did not say he had not told witness anything of the sort about going to the bank; Van did not say the police had told him defendant was in a dying condition; he knows, though, that Wan told Van to tell the truth and explain this thing to them; had the greatest amount of trouble in the world to get Van to repeat what he had told us at the hotel. Went up on the third floor about 8.30, front room; Major Pullman, Burlingame, Kelly, stenographer, and witness; thinks the major started to question him about the check; Van was there; [fol. 80] the major said, "Now, Wan, we are convinced that you wrote this check and wrote this stub; here is your handwriting; there are certain characteristics about your handwriting and the signature on the stub that you cannot get away from," and he said, "Now, tell us whether you wrote it or not"; and he said, "Let me see"; sat there and looked over these various comparisons and looked at the stub, and the major was saying about this letter and that letter, and finally he said, "I think I write that"; the major said, "I don't want you to think; I want you to tell me whether you did or not"; he said, "Yes; I wrote that." The major showed him a copy of his signature on the Harris Hotel register, a copy of his signature on his photograph, and a copy of his signa-



ture in Kang Li's book; thinks the latter was an original signature, the only original used in the comparison; the others were photographic copies; Major Pullman compared the various letters, the "t's" and "W's," the "w's" and "y's," principally the "g's," the witness means; the conversation along this line extending fifteen to twenty minutes; the major put these comparisons right on the book and showed them to him on the arm of the chair where Wan was sitting; believes all the handwriting was put on one photograph; the "w's" and "g's" were pointed out to him; does not know whether his original signature was spelt "Z. S. Wan" or not, but the hotel signature and his picture were only initialed; there was a "g" in Dr. Wong's signature; thinks witness denied writing stub absolutely down the second floor; when the major opened the book and handed it to him, he said, "Wan, I want you to tell me who wrote that"; Wan did not say anything at all; the major said, "Wan, didn't you write that?" Wan never made any answer; the major said, "I want to show you why we think you wrote this, why we are positively certain that you wrote this," and went over these comparisons; cannot give the details of them; the principal signature used was the one known to be his signature, which Burlingame saw him write. The major said, "Well, if you wrote that, you wrote this," referring to the stub; "I want you to tell me, Wan, now, whether you wrote that or not, after my showing you why we think you wrote this; I want you to tell me the truth about it; I want you to tell me now whether you did write that or not"; had the stub and a photographic copy of it, or one photographic sheet; the major said he was convinced the same man wrote the stub that wrote the other, but he wanted Wan to tell him "the truth about it," because the evidence was so convincing in the minds of everybody that we did want to see if he would admit to the truth of even that; notwithstanding our minds were convinced, wanted him to admit it; he said, "Let me see," looked at it carefully, said it looked like his, thinks he wrote it, referring to the stub; the major said, did not want him to think, wanted him to say whether he wrote it; "Won't you be sure about it?" He hung his head for a few seconds, nobody said a word, finally he raised his head and said, "Yes; I wrote that," indicating the stub; and the major said, "You wrote this; now, you wrote this, 'T. T. Wong—\$5,000,'" indicating the stub; he said yes; the major sat and looked at him for quite a while and would let him do his own figuring; he looked at it closely, put it up in front of his face; said it looked like his handwriting; he did not say anything to his brother all this time.

[fol. 81] After the foregoing, we went over the whole case with Wan from the time he left the mission house, his being found in New York, in bed, writing a telegram of condolence, covered the entire thing, how the bodies were found, the wounds on the body, the check; went over practically each and every circumstance in the case for the purpose of seeing if he would tell us anything about any part of the case that would enlighten us as to who committed the crime; gave him a cushion because he had complained about

his bones being tender; we talked about the shots; he said he could not fire a pistol with one hand; we produced a pistol; finally he got both hands and pulled it; we showed him how easy it was then to pull the trigger with a slight pressure; it was not the pistol in evidence; think it was Mr. Kelley's; thinks Wu's pistol was shown defendant Sunday night in No. 10 station house; thinks that was the first time showed him the blood on the pistol. The witness being asked if, during the investigation, he came across any woman's name in connection with Wu, the district attorney objected, objection was sustained, and defendant allowed an exception; being asked if any investigation was made about a woman named Jean La Mar, the district attorney objected, objection was sustained, and defendant allowed an exception. Investigation was made in the neighborhood as to whether pistol shots were heard on Wednesday night January 29th, by any of the neighbors; asked if witness made the investigation personally, says he talked with some doctor out there on the sidewalk, later turned it over to some man to make an investigation; does not remember to whom, there were several detectives there; thinks a verbal report was made to witness by detectives.

Saturday night witness took a nap at the mission house, probably fifteen minutes; defendant was not permitted to do so, did not say he was sleepy; woke up and heard Burlingame say, "I don't want any more of that;" Burlingame said Wan had started to say something in Chinese to his brother, and Burlingame told him he didn't want him to talk Chinese; laid his hand on defendant's shoulder; defendant raised up a coat hanger or a coat hook or something and threw it at him; witness did not see any of that; he judges it was about 3.30 in the morning; there were present at the time the witness, Burlingame, Kelly, defendant, and his brother; witness did not tell defendant had the fingerprints of a heavier man, or that he had his fingerprints; must have ~~left~~ the mission house shortly before five o'clock in the morning.

Witness went to station house Sunday night with K. S. Wang about 6 or 7 o'clock for the purpose of still talking to him about the case; "I wanted to straighten out a great many circumstances which pointed to him;" witness being asked if he wanted to get some talk out of him which would fasten the crime on him, answers, "I wanted to clear up this crime, yes, sir;" when went to the station house, wanted to know from him whether he was guilty; wanted him to tell the truth; asked him on a number of occasions to tell the truth, and those circumstances which pointed very strongly against him, strongly indicated to witness' mind that he knew a great deal more about the case than he told of; that we had caught him in several contradictory statements, and witness said, "We are all firmly of the belief that you know who killed those men;" sat and watched him and looked at him carefully and for a long time after I would [fol. 82] tell him those things and would say, "Now, you think it over," and stayed right there with him.

"Q. Your purpose in telling him those things was to make him talk?

"A. My purpose was to get him to tell me the truth about this case.

"Q. Answer the question, will you?

"A. Well, he had to talk.

"Q. You felt, then, after you had obtained a statement from him about the handwriting that he had not told the truth?"

Thereupon the district attorney objected to the question as asking for the witness' feelings, which objection was sustained, to which action counsel for defendant prayed and was allowed an exception, on the ground that it was proper to show the witness' feeling in regard to the defendant.

Stayed with the defendant some little time at the station house on Sunday; told him certain things, how far had gotten with the case, saying, "You know we have been at this thing a long time, Wan, and I am tired if you are not;" asked him to tell us the truth; can not remember word for word what was said; appealed to him to tell the truth; said there were certain things that pointed directly to him and told him, "If you did not kill these people, then I want you to tell me who did;" that is when he finally admitted—or said that he saw all three killed, but took no part in it; that a Canton Chinaman by the name of Chen, with a big gun, killed Wu after Wu had shot Dr. Wong and Hsie; gave witness a card of the man written in Chinese; told him several stories about Chen, a New York merchant, who said he may go to Chicago, and acting on that witness sent Kelly to New York. Burlingame and Kelly and K. S. Wang were at the station house all that time; witness had Kelly and Burlingame to come in and had defendant reiterate the statement; before that when he had said he wanted to tell the story, witness told him one thing was uppermost in his mind which he wanted him to answer first: "Did you see these men killed?" He said, "Yes." Witness told him to go ahead and tell how it happened; it was at that time, after reviewing the various points, that witness told him "things look black for you;" thinks used the word "bad" instead of "black;" since thinking it over witness thinks "bad" was the word he used instead of "black;" asked if he wanted to correct the statement he gave the other day when he used the word "black," the court said the difference was immaterial and refused to allow the witness to answer the question, to which action the court allowed the defendant an exception. When witness first started to talk with defendant on that occasion, K. S. Wang was present; it was on that occasion that witness told defendant, "If you are guilty, and your brother is innocent, I want to know, for I am holding your brother, just the same as I am holding you;" witness thinks he said, "Now is the time to tell me," intimating to him that he had been in confinement a long time and witness wanted to know something about it; they were both in confinement and witness was anxious for him to tell about his brother; was satisfied he was guilty but did not tell him so at that time; was just about that time witness said "things look bad for you," or "things look black for you," and you ought to tell me the truth, and then it was he made

[fol. 83] the statement as to how the thing happened, as to Chen killing Wu after Wu killed Hsie and Wong, and defendant was present when it was done. He had told witness two or three times his brother was innocent of any wrongdoing. The following morning he was taken from No. 10 station house between ten and eleven o'clock and escorted to the mission house again; when he began to tell where Chen was witness said, "Wan, now tell us the truth about this thing; you know there is no Chen in this; you are just putting Chen in your place; tell us now what you did;" he hung his head and witness said, "Come on, Wan, now tell us;" witness put his hand to his chin, patted him on the shoulder, and he told us he had killed Wu after Wu had killed Wong and Hsie; when we took him up and explained to him how Dr. Wong was found, he began to cry and said he was very sorry Dr. Wong had been killed. We sat down in the kitchen and Burlingame made notes, Burlingame asking him questions. Witness never during the investigation made statements to defendant to the effect that it was a case of self-defense, and if he would say that Wu had killed these other two men and then defendant had killed Wu in self-defense, it would be best for him; witness told him we could never get at the facts unless we could get an eyewitness, and to tell us how it happened. We then took him back to No. 10 station house; witness did not tell him at the station house he must not let his brother suffer.

The Sunday night previous to this Monday, K. S. Wang talked to the defendant; the purpose of having K. S. Wang talk to him was because he was a friend of his and a Chinese, the same type of Chinaman that he was, and we thought there was a chance for him to tell K. S. Wang what he probably would not tell us; made no suggestions to Wang except told him the circumstances of the case and said to him, "You can readily see from these things that he got a lot to explain, and I would like to hear what he has to say to you about those circumstances; that is, incriminating circumstances," and witness said, "I wish you would go over the whole case with him from the time he brought his brother down here to the time he was arrested in New York, or brought here from New York;" K. S. Wang had been brought down from New York by Mr. Kelly on account of the fact that a telegram had been sent by Wang on his way from the West to defendant or his brother; thinks K. S. Wang was brought to town Thursday or Friday; witness suggested that he go to see defendant Sunday night; just before he went in and talked with defendant witness suggested that he go in and talk with him and he was allowed to sit in there with him alone.

Witness does not remember anything about a garter in the case, never said anything to Wan about one being found in the house; cannot remember it; may have been; thinks on the Monday morning when defendant demonstrated how he had shot Wu, he said something to him about the stains on the front door; does not remember just what was said; witness made no effort to determine whose blood it was, it cannot be done; he admitted getting his hand bloody when he shot Wu and admitted putting blood on the pistol "and laying that pistol in that chair;" we asked him if he attempted to go out

by the front door, the basement door, and he said no, he went out upstairs.

[fol. 84] From the time defendant was in custody until he went to jail, witness should say he talked to him about twice a day; sometimes did not do so, but would usually try to get up there a while in the morning or a while in the afternoon, and would come around after supper.

Thereupon, Major RAYMOND W. PULLMAN, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is major and superintendent of the Metropolitan police and has been for five years; assisted in the investigation of the murder at 2023 Kalorama Road in January, 1919, and in connection with it remembers seeing the defendant first on Saturday evening at 409 15th Street N. W., about nine o'clock, as soon as the train returned from New York that we were expecting defendant to return on. There were present at that time Inspector Grant, Detective Sergeants Burlingame and Kelly, and witness; we told him we appreciated his coming, he came of his own accord; he was not feeling any too well after his journey, and we questioned him and told him what occurred, the four of us telling him of it in order to make it possible for him to help us, so far as he could, in arriving at who had committed this deed; we asked him about his staying as the guest of Mr. Wu at the mission house; he told us of having been there three or four days, and having left Washington Wednesday evening; had had dinner with Mr. Wu, said he left on the 8.15 train; asked if he was sure Wan said, "Of course;" asked if it was not the six or seven o'clock train, Wan said no; said he was sure it was the 8.15 train; witness said, "Mr. Wan, you have come here according to your statement to help us in this investigation, and have started out by telling us two deliberate falsehoods:" Wan said it is true, witness told him it was absolutely untrue that he left on the 8.15 train, or that he had dinner with Mr. Wu; told him Mr. Wu had dinner with U. Shang Li, Howard Jeffers, and King Chu on Wednesday, and defendant could not have had dinner with him; defendant said, did not have dinner with him, but Mr. Wu, knowing defendant was not feeling well, got him some fruit and went with him to the station and ate there just before the train went out; witness had conversation with Wan regarding going to the bank; all this occurred "during the hour and a half or two hours following his arrival." Asked him if he had been at the Riggs Bank, or knew anything about this \$5,000 check, all of which he denied; we had the bankmen look at him and they all said he was not the man who appeared at the bank with the check; we asked him about his brother and he denied that his brother had been in Washington; should say the entire conversation lasted about two and a half to three hours; after that, "he being our guest, we housed him as well as we could in a good hotel, the Dewey."

Witness described finding the check book "Dent No. 1" Sunday afternoon on the ledge of a desk in the secretary's room at the mission house on the second floor, back room, another book on top of it.

Saw defendant at 2023 Kalorama Road Saturday night, a week following the murder; "he went there at his own request, largely, because it was not necessary to take him there; we questioned him; he wanted to see where his friends were killed, he said. He broke his glasses, was not feeling well, and one or two other things, and he [fol. 85] was not able to go there until Saturday night, when he went there with Inspector Grant, Detective Sergeant Burlingame, Kelly, and witness; showed him the entrance hall of the building, reception hall, where Dr. Wong's body had been found; had the boys light up the entire house, took him to the basement, showed him where the bullets hit the wall, where the bodies had lain, the condition of the table, and so on; were in the furnace room, should say, twenty-five or thirty minutes; not much conversation there; he asked a number of questions which we answered to the best of our ability; took him to the second floor front room, where Kang Li was; defendant was questioned there about 20 or 30 minutes, then we proceeded to the third floor; that night, witness had Sandberg Exhibits 12, 13, and 14, being photographic copies of the alleged signature of the defendant, also had check book with the \$5,000 stub in it. Dent No. 1, and had conversation with the defendant respecting these handwritings. "Wan himself had impressed us with the fact that the man who wrote the check was the man who did the murder."

\* \* \* He had denied having written the check or having had anything to do with it up to that time. Witness said, "Wan, won't you take these samples of handwriting, including the check stub No. 24, look at the check stub and look at the check endorsement, and look at your signature at the Harris House. \* \* \* We are here as representatives of the police department; we want to find out who wrote this check; will you help us; make yourself a handwriting expert for the time being; none of us are handwriting experts; look at the writing on these samples, look at the "w" in the first place, it is a peculiar "w," straight up and down; look at the "g," which has a turn which goes up in the air; by all means look at the spacing of the letters, which is very peculiar and distinct; judge for yourself about this and say whether the same man that wrote the stub also endorsed the check and signed the register at the Harris Hotel; he said to us, "leave me alone," and he thought for a few minutes—it seemed like a very long while, it was perhaps three or five minutes—then he said, "I think I wrote that," pointing to the check stub; I said, "Wan, we don't want to know what you think, we are merely trying to arrive at the truth, to study the thing over, and just tell us the truth and nothing else;" he waited another minute, perhaps, then said, "I wrote that," and handed it to me; should say this was around 11 o'clock, or a few minutes later. Witness left at midnight, leaving at the house Inspector Grant, Detective Burlingame, Detective Sergeant Kelly, and perhaps Mr. Laws, the headquarters stenographer, saw the defendant the following day, Sunday, late at night, in the tenth precinct station house.

On cross-examination witness was asked what experience he had had as policeman before he assumed the position of major; the district attorney objected to the question, which objection was



sustained and defendant allowed an exception. Witness being asked what experience he had had as a practical policeman, the district attorney objected, which objection was sustained and the defendant allowed an exception. Witness being asked if he had not been in the newspaper business before he became major, the district attorney objected, objection was sustained, and the defendant allowed an exception. Witness being asked what his position was [fol. 86] before he became major, the district attorney objected, objection was sustained, and defendant allowed an exception.

Witness says first learned of the alleged transaction at the Riggs Bank in connection with this case about 11.30 or 11.45 Saturday morning following the discovery of the bodies; does not know whether his department received any information about the alleged check on Thursday, January 30th; witness went to the mission house first on Friday, the 31st, between 6 and 7 o'clock; states at first that there was a coat over the head of Dr. Wong and a pillow over the head of Hsie; then states there had been a coat over the body and it had been already taken off; does not know by whom; did not notice any empty shells around the body; they had been found, does not know whether at that time or not; the coroner and deputy coroner, Drs. Nevitt and Titus, were there when witness arrived; saw Kang Li in the front room of the mission house, also in the reception hall, "somewhat overcome with the loss of his friend"; he assisted in searching for photographs; as a result of what Kang Li told witness, determined to send Burlingame and Kelly to New York; witness first saw Wan at the 15th Street house when they came back from New York, should say about 9 o'clock, may have been 6 or 7; witness thanked Wan very much for coming here, realized we had a very difficult thing to solve, wanted Chinese help, asked him to give all the information he could about the men personally, and about his stay at the mission house, which he did; said Dr. Wong was one of his great friends, practically a guardian, that the last word his mother had said to Dr. Wong when he came over here was to take care of this boy; seemed to have very high regard for Dr. Wong and the other men, but particularly for Dr. Wong, who was very eminent in China. When defendant admitted he was in Washington on Wednesday and left at 8.15, witness told him he had stated he had come here to Washington to help us in this investigation and had started off by apparently showing bad faith in telling two falsehoods, the time he left and having dinner with Wu. Kang Li was present this time, noticed no coolness between him and defendant; conversation lasted about twenty-five minutes, "because we had to talk to these men in language they could very plainly understand; they knew English quite well, but some expressions we used they did not catch; it was a very much slower task of interviewing than it would have been with you or any one else speaking perfect English." Defendant was taken to 409 15th Street because it was quite desirable to interview him in privacy, "he was not a prisoner \* \* \* he was merely a friend of the dead man who had come here to help us \* \* \* we were bringing him here as our guest; we did not think him guilty of the murder when we



brought him here"; the newspapers had come out that afternoon and published the fact with his picture that we had the man we thought guilty; we did not think so at the time we brought him here; at police headquarters we could not have conducted an interview on account of newspaper men, who had a right to be there. When defendant came from New York he had been more or less sick in bed with chronic stomach trouble, as witness understood. Does not remember any profanity used toward defendant at 409 15th Street, but "I think I do recall his saying that some one called him a 'damn liar.'" Witness does not recall having called him that; [fol. 87] thinks defendant misunderstood some one; does not recall Grant calling defendant a murderer. Had the bankmen come and look at Wan one by one, and go out without saying whether he was or was not the man; it was after they left the room that they said he was not the man; defendant insisted all along that he knew nothing about the check and was entirely innocent. At witness' direction defendant was taken to the Dewey Hotel; Wan was permitted to use the long-distance telephone to New York; asked if it was at witness' direction that a guard was placed at the Dewey Hotel, answers, "it was our directions that a man was to accompany him and be with him at any time, at all times, rather. This guard was changed three times a day; throughout the whole thing he had been in a perfectly good humor with me and most of the others." Witness brought Wan papers—Washington and New York papers. Criticized witness one day for not bringing him the papers, and another time for not dropping in. His brother arrived on Monday. Witness had numerous conversations with defendant on every subject—international politics, the League of Nations, Chinese customs, literature, and everything else. Witness did not ask him if he believed in God; he volunteered the information that he was a student at St. John's College, Shanghai, which he told us was an Episcopal college; told witness he was a Christian. Witness being asked if defendant complained about his physical condition, answers, "he complained—he did not complain, but he had stomach trouble, and about he could not eat his food sometimes." Sometimes he would order a meal and had no desire to touch it; "We asked him if he wanted to go to a hospital, and he did not; and we wanted to know if he wanted a doctor, and he said no, but wanted to get some medicine he had in New York." Physicians saw him fully four times. Asked if physician saw him on one occasion after midnight, says he kept no record of physician's visits. Asked if took defendant to the Kalorama Road house so that he might see his brother, says took him there because he had requested to go, "he had rather a curious desire to see where the men had been killed. On day he broke his glasses; another day he wasn't feeling well. Finally, Saturday came and we decided to take him there"; did not promise him he would see his brother, but "we told him his brother might be there at the same time." His brother was at the Dewey Hotel at the same time; did not permit them to see each other because neither of us spoke very good Chinese and we knew if these boys once began talking Chinese to one another our investigation of the case might end right there,

although both of them had come here with the statement they came to help us, and we wanted them to help us individually and uncontrolled by anyone else; had Kang Li as an interpreter; asked if there was any particular reason why did not use Kang Li as interpreter at the Dewey Hotel; says defendant talked to Burlingame, Kelly, Grant, and witness in English. Asked if fact that the brothers might talk in Chinese was only reason did not permit defendant to see his brother, says should say that was the principal reason; "We were making quicker progress talking to these men, who are so different from the Anglo-Saxon, by talking to them individually." Witness first says the house was fully lighted when took defendant there, and after being questioned in that regard says it was partly lighted up when got there and then every light was [fol. 88] lit, so that defendant could see as quickly as possible the things he wanted to see when we took defendant there on Saturday night"; "we had both been there hundreds of times previous and we had seen that, but we wanted him to help us in regard to the check-book matter and other things, and we wanted the truth from him and the information \* \* \* we wanted him to give us the information that he could, as to who presented the check and who wrote the check." He wanted to see where everything had been done and asked a number of questions; thinks the pictures were shown to him; we told him about the glasses at the bottom of the staircase; that Dr. Wong's body had been found upstairs on the reception hall floor, indicating that he must have been shot and he had struggled upstairs; that things were in a topsy-turvy condition in the little central room, lamp shade turned over, and so on; is not sure the glasses are Dr. Wong's glasses; the chair on which the pistol had been placed was shown to him; perhaps the pistol was on the chair that Saturday night; he may have handled the pistol; pointed out to him the bullet hole in the wall; does not recall whether his attention was called the glancing bullet blow on the table. Van arrived at the mission house about quarter to nine; might have been seven-thirty; thinks defendant's attention was called to the blood on the pistol; there was blood on the pistol, on a piece of glass or lamp shade in the upstairs middle room, and on the lower door. Defendant asked about position of the bodies in the basement, about the cushion over Mr. Hsie; defendant is a man who talks now and then; there were no rapid-fire questions, they were slow questions; thinks he was shown the pictures showing the position of the bodies; had Kang Li there in case the brothers started talking in Chinese when they were brought together, because there was no need of it, and it would be evidence that they wanted to cover up something; "We did not want them to talk in Chinese and were not taking any chances"; we wanted Kang Li *ought* of sight; does not recall at whose suggestion Kang Li was placed there; the witness, Burlingame, Kelly, Grant, and Mr. Laws, the stenographer from police headquarters, were there when Wan was ushered into room where the defendant was, and Kang Li was in the closet or alcove, or simply in the next room; they shook hands; there was a little conversation between them, and there was one exchange of looks that they were

warned about; "one of the boys sort of nodded his head in the negative as that the other boy should not talk on that subject, and we spoke to Mr. Wan about that, and Mr. Wan said, "I sit with my back this way if you don't want me to nod to him," and he sat for a few moments with his back, and I said to him, "All right, you can sit around," and we started to question both brothers; there were very few things said between the two, they were not very talkative; this incident of nodding was about twenty minutes or a half hour after the brothers met, when witness asked Van if he was the man that took the check to the bank. Asked what his purpose was in putting the brothers together that way, witness says here was no objection to it; asked why he did not permit them to see each other at the hotel, says, "Why should we have?" Asked if there was any objection to it, says, "There was no objection to it, but they wanted to see one another and we had them meet in this place; it was a renewal of the chance of the two brothers to see one [fol. 89] another and an opportunity for them to give us what truth they could"; moved Wan and Van up to third floor because some one came in and said there was a crowd of people watching down stairs at the door to see if they could look in and get in, and they could overhear anything being said. On the third floor, front, we slowly proceeded with the questioning; we asked them about their movements and about the check; they were treated with the utmost consideration; we asked defendant where his brother got the check which he presented to the Riggs Bank; his brother Van had been identified by the bankmen as having presented the check for \$5,000, "and we wanted to know where Van got the check"; Wan had told about a mythical fellow by the name of Chin or Chen who had given Van the check down at the Union Station on Thursday as they were getting into a taxicab; said the man had stopped the taxicab suddenly and spoke first as if he was a stranger and then said he knew them, and defendant said he was an awful fellow who had taken his satchel from him in New York; pretty soon he stopped talking and waited for us to go on; presumes Van was in the room at this time, but does not recall; so far as witness knows Burlingame and Kelly were there; we had been talking about the check pretty much for the last day or so and talked about it two or three times that evening before he made any admission that he wrote the stub; we wanted to find out as much as we could about this check; asked if wanted to get a statement from defendant about the check, says wanted to get a statement from him about the whole transaction; asked if he was particularly interested in obtaining a statement from the boys respecting the check, says was particularly interested in obtaining the truth about the whole transaction; the question being repeated, the witness gave the same answer; asked if that was the reason defendant was continuously questioning about the check during the course of the two or three days previous, answers, "It was not continuously; the way for you to get information out of people is not to continuously ask about a thing"; asked again if they were endeavoring to get a statement from him respecting the check, says, "Naturally we were trying to

get as much information as we could regarding this check"; was not satisfied with Wan's statement about the man stopping the taxicab; did not say no such man as Chin existed, for such a man did exist; when defendant was asked about the handwriting, does not recall a complaint about being ill; defendant asked to be let alone when he was looking at the handwriting; at no time did he complain about the questioning; it is not true that defendant said he was not guilty and had nothing to do with the murder; he had already given us some idea that he knew something about it; told us about this man having the check; witness was not satisfied with that, wanted the truth; asked him to help us identify the handwriting and consider the various signatures we laid before him; we had found this book on Sunday with the \$5,000 check stub made out to Dr. Wong, the check was made out to bearer, the stub was written differently from all the other stubs in the check book; and witness said to defendant, "Wan, the stub, as you see here, is made out to Dr. Wong; the check your brother, Van, presented in bank was made out to bearer; that was the information given to us by the Riggs Bank officials; now, we want to know whose handwriting this is \* \*; you told Inspector [fol. 90] Grant yesterday, Thursday, that the man who wrote—'You find man wrote the check, you find murderer' \* \* \*; you realize that we ought to know who wrote this stub, and he said at first he did not know, then took the other specimen, the check book, turned to stub 24 and witness told him to look at it, look at the 'w' on all the specimens, very distinctive 'w,' just a plain mark up and down; look at the 'g,' which goes up in the air, and, what is more important, look at the spacing of the letters and so on, and he said, 'Let me have it and let me alone,' and after a few minutes defendant said, 'I think that my writing,' indicating the stub, which was a very important admission"; witness said, "We do not want to know what you think, we want the truth and all the information that you and your brother can give us," and he said, "That is my writing," indicating stub again; there was no special discussion or argument about the spacing; told him was not interested in what he thought, more interested in his giving us the truth and we wanted to know who did the writing. At the time Grant, Kelly, Burlingame, and witness and Van were grouped around defendant and thinks Mr. Laws, the stenographer from headquarters, was still there; Mr. Laws was there for the purpose of taking down in shorthand anything important that developed, but does not recall whether he made a record of this conversation; if made a record of everything that had gone on there could have written a book, "but this was short and sweet," and "we knew that Wan, being a very honorable man, as Chinese are, would stick to the statement he had made, so we were advised"; asked if he had stuck to previous statements, witness says told more and more of the truth each day; asked if witness left any instructions as to where Wan should be taken from the mission house, witness replied, "I do not know whether or not I did, sir. His whereabouts had not been discovered that Saturday evening, or publicly known, and we did not want the hotel crowded by all of the people of Washington,

and we took him in order to relieve him of any embarrassment; we took him to the station house." "Well, frankly, when he admitted the matter there, we were ready to charge him with murder," but this was not done till he had made further admissions; Wan had told witness before Van was brought into the room, "When we meet we shall tell everything, and I will not try to talk with Van in Chinese when I see him; I would do anything to help him and help you," and when Wan nodded his head to Van, that was the first indication of a slight breach of faith, and in humiliation defendant turned his back and said, "Al- right, he need not see me"; asked if the witness had stated in his previous testimony that Wan said when they met he would tell everything, witness denied that he made such a statement, when his testimony as above quoted was read to him and he was asked if he had not made that statement, witness did not answer; and being questioned again, says does not think that defendant said, "We will tell you everything we can to get information on the matter"; when Wan nodded to Van he was stopped; some one said to him, "Do you believe that you are keeping your word?" or something like that. In the conversation relating to the handwriting defendant may have been shown a photographic copy of the stub. Witness left the house around midnight because could see that defendant was not disposed to talk much more; gave the statement in homeopathic doses, a little [fol. 91] now and then. Witness being asked if when he told Wan he wanted the truth, it was his purpose to get an admission that he went to the bank, says no, they knew he had not been to the bank; asked if he knew that Wan did not bring the check to the bank, answers that he did so know; and asked if he were not trying to get him to admit, as a part of the bank transaction, that he had written the stub, answers, just wanted him to give all the information he would on the subject; "The stub was plainly his handwriting, and he wanted to get the truth." Witness being asked if it was not the purpose of the witness to bring home knowledge to Wan about the bank, answers, "If you will say 'about the transaction,' I will say 'yes.'" In the conversation about the check Saturday night the witness recalls Inspector Grant said to defendant prior to the admission, "You told me yesterday, or a couple of days ago that 'you find man that went bank, you find murderer,'" as far as witness recalls, and as witness got the inspector's meaning he said, "We will leave the discussion of the murder itself for the time being and discuss the check," in substance. Asked if before defendant made the admission in regard to handwriting in this conversation, any of the officers said to him, "If your brother is innocent, now is the time to tell it," says does not remember the question being framed that way; we told him we wanted the truth about his own recollection of the transaction and the murder, and we wanted the truth about his brother's connection with the murder and with the check transaction; asked if before took Wan to the mission house that night had told him Van had said certain things about him, or endeavored to foment trouble between the brothers, answers no; they had asked Wan about the truth of Van's statement that they had had some quarrel in New

York and Wan had beaten his brother, and also asked Van about the truth of Wan's statement that Van had tried to take Wan's liquor; says not true that told defendant that if he would tell about the case he would let him see his brother.

Asked if it were not a fact that on February 10th a statement appeared in the Washington Times purporting to be signed by witness, commenting on this case, the district attorney objected, which objection was sustained, to which action defendant was allowed an exception. Asked if he ever gave any statement to any newspaper with respect to this case, the district attorney objected, objection was sustained, and defendant allowed an exception. At the bench, counsel for defendant stated to the court that the object of bringing in the statement was to contradict the witness. The court stated that all counsel had to do was to lay the time and place. Witness was then asked if, on Monday, February 10th, there appeared in the Washington Times, the final and home edition, a statement signed by witness regarding this case, and witness asking to see the statement, the same was shown to him, and the witness says that the part of the statement in the quotes is his statement, the same is marked "Exhibit Pullman 1," and is as follows:

"In all the work of questioning the men who came here as friend and brother of the friend of Mr. Wu, and who later made suspects of themselves by telling things that we knew to be untrue, we realized that the work was like working low-content gold ore; we had to labor hard and to spend a great deal of time to get the small but important connecting facts in the great story. The Chinese have [fol. 92] their own ideas, which we had to indulge, or we would not have gotten anything. When they wanted to talk about the peace conference, or some other unrelated subject, we had to talk that subject, and when they were anxious to talk crime, naturally we were willing to listen intently." The statement being offered in evidence, the district attorney objected, the objection was sustained, and defendant allowed an exception.

The bloodstain on the door was first reported to witness on Monday or Tuesday by Detective Sergeant Sandberg, or maybe Inspector Grant; does not know whether any picture was taken of the stain. Saw defendant at the station house Sunday night about midnight; he was yelling for apple pie, and witness told them for goodness sake to get it for him; this was after he had made his admissions to Inspector Grant and Burlingame.

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Thereupon EDWARD J. KELLY, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he is now, and was, in January, 1919, a detective sergeant of the Metropolitan police force; visited 2023 Kalorama Road on Saturday, January 31, 1919, about six o'clock p. m., saw Kang Li there; went to New York with Burlingame and Kang Li, arriving there next morning around seven o'clock; with New York detectives



went to 313 W. 112th Street about 8 o'clock. Burlingame and the New York men went to the house first, then beckoned to witness and we were shown to the top floor by Mrs. Bartels and went to the defendant's room; defendant was sitting up in bed; Burlingame said, "We are detectives from Washington investigating the death of Dr. Wong and others." Defendant said he had just heard of it in the newspapers and was drafting a letter of condolence to his friend, Mr. Li; just before that witness searched the bureau and Burlingame the bed; were looking for a gun or for other evidence; witness went out and got Li; Li told defendant he had seen him at the house on Wednesday night and he and Li were suspected and the best thing to do was to go to Washington and straighten it out. Defendant said he did not have any money and Burlingame said he would pay his way; defendant said he would like to come but was suffering from his stomach and needed a nurse to attend him, and Li said he would act as his nurse; Burlingame told him he would see that everything was done for him, that he got proper treatment and food, and he then decided he would come; he dressed and we left the house together for the station; Van said he had not been to Washington, had been to Baltimore when he was coming through one time from Ohio. We arrived in Washington around six o'clock and went to 409 15th Street Saturday night, February 1st; there Major Pullman, when Wan said he had had dinner with Wu, Wednesday evening, the 29th, said, "You couldn't have done that because Wu was at dinner with someone else," and Wan explained that Wu was at the station and they had something to eat, some fruit or something of that kind; he was asked by Major Pullman if he had gone to the bank with a check and he said no; that was the first witness had heard of the check part; witness was sent to get the bankmen and they came and looked at defendant, but witness does not know what they said; witness remained until got ready to take defendant to Dewey Hotel, around 10.30. Went to New York Sunday, February 2nd, went back to the house with [fol. 93] the New York detective and brought Van to Washington on Monday, February 3rd, and took him to 409 15th Street, and from there to the Dewey Hotel; witness returned to New York Tuesday, February 4th, returned to the house, and searched for check and telegrams, and brought back a small suit case; arrived back in Washington the evening of Wednesday, the 5th; saw defendant that night at the Dewey Hotel; on Thursday witness talked with defendant at the Dewey Hotel for a while and was also present when Inspector Grant and Detective Burlingame talked to him, and again, on Thursday night, was present at a conversation in the room, and on Friday was in the room talking with defendant and Inspector Grant had been in the room and gone out some little time and came back and started to talk with defendant about the check, saying, "Wan, the check has nothing to do with the murder," or something to that effect, and defendant answered, "You find the man with the check; you find the murderer"; Inspector Grant said, "We know the man who went to the bank with the check; it



was your brother Van, your brother Van has told me"; defendant became excited and said would talk no more; witness was with defendant pretty nearly the whole day Friday, got there about 10.30 or 11; went down to the lobby, read a paper, came back to the room and stayed there; left a little while; came back around three o'clock and then left for a little while and came back; never talked to him about the case; about 8 o'clock Saturday night took the defendant to 2023 Kalorama Road, went into the parlor, and remained there until Major Pullman came; then went out where Dr. Wong's body had been found, stopped there, and defendant saw his blood on the floor and asked if it was blood and was told it was; went down in the cellar where the other bodies had been found; blood there, too; defendant asked how the bodies were lying and was shown the photographs giving the positions; there was not much talk there, but we watched him very close and looked at him and didn't see any sign of fear; we went upstairs to the second floor, front room, and his brother was brought in, but on account of the noise remained there only about 25 minutes and then went to the third floor; up there, in the latter part of the night, Major Pullman had a check book and some photographic copies of writing and asked Wan about it, and if it didn't look like his writing, etc., and they were comparing the writing in the check book with some photographic copies they had and the major showed Wan the "g" and spoke to him about that and the spacing, and after some little time defendant said, "I think I write that," and the major told him, "We don't want you to think about it, we want to know about it, whether you wrote it or not," and he paused for some little time and rolled his eyes and said, "Yes, I wrote it," referring to the question of the check stub. Defendant arrived at the mission house about 8 o'clock and left in the neighborhood of 4 in the morning, then went to the 10th police station; around midnight Grant was lying on the bed asleep and witness was talking to defendant about his whereabouts, etc., what he did on the night of the 29th, where he had gone, and came to one question that he refused to answer, sat and stared at witness, and Burlingame, who was there told defendant to answer the question, and defendant turned to us and started to say something in Chinese and Burlingame said, "Here, don't talk [fol. 94] that Chinese, answer Mr. Kelly's question," and defendant picked up a coat hanger and raised up out of his seat as though he were going to hit Burlingame, and the latter caught him by both shoulders and sat him down in the chair and told him, "We do not want any more of that," or, "We do not want anything like that around here."

Sunday night, February 9th, about 7 or 7.30, in company with Inspector Grant and a young Chinese named K. S. Wang, from New York City, and Burlingame, witness went to No. 10 police station; Inspector Grant and Wang went into the sergeant's room and talked to defendant for a while, and then the inspector came out and left Wang and defendant in the room together, placing a man on the outside in the yard under the window; after some little while Wang

called Inspector Grant, who went into the room with defendant, and then the inspector called Burlingame and witness into the room. After Wan had told Grant he was going to tell him about the affair, Grant said: "Let me ask you first, were you present when the men were killed?" and defendant said, "Yes," and went on to relate how a Chinese named Chen had killed Wu, after Wu had killed Wong and Hsie; defendant said had seen Chen, who was a Cantonese Chinaman, on the street here in Washington; he at one time attended Columbia University, or New York University, and had an apartment at the corner of West 125th Street, near the university. That night witness left for New York again, trying to locate Chen, arriving back in Washington Tuesday morning, February 11th, and went to No. 10 police precinct, with Burlingame, Mr. Laws, who is Major Pullman's secretary, and talked to defendant, about 10 o'clock or a little later; Mr. Burlingame did the questioning, and Mr. Laws "took it down in shorthand." Witness says premises 2023 Kalorama Road are in the District of Columbia.

Thereupon, on cross-examination, says, when they arrived at defendant's room in New York first time the room was not any too warm and defendant had on a coat and sweater and a pair of gloves; Mr. Burlingame said: "We are detectives from Washington," and searched for a gun. Witness did not have a revolver in his hand; witness's revolver is a .32 calibre. Does not know whether defendant had any money or not; when arrived in Washington Burlingame called headquarters and an automobile came after them, and they went to 409 15th Street, about 6 or 6.30. In Wan's room in New York, when Kang Li said either of them might be suspected, Kang Li did not say anything about having a key to the mission house or having borrowed money from Wu; on the train coming to Washington Li asked Wan for his address, which is how Wan happened to write his name and address; neither witness nor Burlingame suggested this to Kang Li; there was no reason why they should do anything like that, or ask him for any handwriting, because did not know there was any handwriting mixed up in the case.

On Saturday night, at 409 15th Street, defendant said he had not gone to the bank; he was told that he had gone to the bar by Major Pullman or Inspector Grant; when he denied it they said they would send for the bankmen; brought defendant to Washington for the purpose of ferreting out the mystery and told him that, told him he would be treated decently and he was treated like a guest; neither the witness or anyone in his presence told defendant Saturday night [fol. 95] that the bank officials had not identified him; they looked at him and went out; Kang Li was there at that time; went to the Dewey Hotel about 10.30 or 10.45; he did not register, we had made arrangements with the hotel people to have him there; witness did not put a name in the book for him, but a name was put in the rack; does not know by whom the name was furnished; witness remained with him there about an hour; there was some talk by the defendant about something to eat; witness found cafe was closed and sent the bell boy to get something to eat, but does not recall whether witness was there when he came back.

When defendant got to Washington from New York, he said he was suffering from some stomach trouble and did not feel good, had been sick for some time; Van arrived in Washington Monday, February 3rd, with witness, and occupied a room above his brother at the Dewey Hotel; did not permit defendant and his brother to talk together, the former did not request that of witness, nor did Van request witness to permit him to see Wan; on Thursday, February 6th, defendant asked witness where his brother was, and witness told him he was in the city, did not tell him where in the city; witness was present in defendant's room in the hotel when he was questioned by Inspector Grant four or five times, sometimes half an hour, sometimes an hour, and sometimes maybe two hours; sometimes "we would talk and sometimes there would not be anything said at all," sometimes defendant requested to be let alone and "sometimes we did and sometimes we did not let him alone." The only time witness saw him out of bed was on Saturday; questioned him while he was in bed; sometimes witness would try to talk to him, and he would be as though witness was talking to the four walls; asked him all kinds of questions about going to the bank, whether he wrote the check; various things; notwithstanding the fact witness knew the bankmen had not identified defendant, insisted on asking defendant if he had gone to the bank with the check.

On Wednesday, February 4th, witness searched the room in New York pretty thoroughly, went through trunks in the room, brought the little satchel back but did not open it, and at no time searched it, and until lately, three or four weeks ago, it was not opened in witness' presence. Witness first left it in Inspector Grant's room for several days and then turned it in to the property clerk; it was opened at police headquarters three or four weeks ago; it was unlocked; does not recall whether there were any necktie pins in it; searched the room in New York to find check and telegram, and see if there was any bloody clothing; did not search the valise but searched the trunks and bureaus; does not know why he did not search the valise, and does not know anything about any valuable necktie pins, and volunteers the statement does not know anything about any valuable necktie pins being gotten off this man; was no necktie pin in his possession when he came to Washington, nor in the satchel when it was brought to Washington, and if he had any pearl necktie pin, it was in the property clerk's possession so far as witness knows. Witness found no bloody clothes in the room in New York and no checks. Asked why witness stayed around defendant's room all day Saturday before he was taken to the mission house, [fol. 96] says had nothing else to do and was told to go there and stay there, and frequently during the day went to the rooms of both the boys and stayed sometimes three-quarters of an hour; had lunch with defendant, that is the only time witness saw him out of bed during the entire week; was in the room off and on all day Saturday until 7 o'clock, sometimes for half an hour, sometimes for an hour; was not questioning the defendant; on the way up to the mission house told him his brother was going to be there; at the mission house showed him where the bodies were lying, the

blood was there; it is not true that during all the time he was being shown around defendant disclaimed any knowledge of it; "we were looking at him, but he seemed very cold and calm." Did not hope by the exhibition of this place that he might show some emotion; there was no flashlight leveled upon him; when they were at the spot where Dr. Wong's body had lain, a coat that had been over his head was lying on the steps, and defendant asked what the coat was doing there and was told it had been over Dr. Wong's face; "coming up out of the basement, as we started up the stairs, I think somebody said 'There's some blood spots there.'" Does not recall exactly whether Inspector Grant said evidently Dr. Wong was shot there and went upstairs; he might have. In the second-floor front room, where the brothers met, the witness was asked if defendant was shown Dr. T. T. Wong's picture on the wall there that night, and answers, "He may have been; I do not recall \* \* \*. I am not clear on it." Did not hear Major Pullman say Dr. Wong was looking at him, or that if he were not guilty would not hear noises in the closet; went up on the third floor because doorbell was ringing, newspaper men knocking on the windows, telephone constantly ringing and automobiles blowing from the outside, and on the third floor were not disturbed by the telephone and doorbell. Defendant had been shown the gun; is not clear whether he was shown the lamp shade or a blood smear or alleged finger print; is not clear on whether defendant's brother handed him a cushion when came on second floor, did not see cushion taken away from Van to prevent him from giving it to his brother; up on the third floor, defendant was in the room from the time we went up until 3 or 4 o'clock in the morning; Major Pullman did most of the questioning until he left. Being asked to detail what happened when Burlingame insisted that the defendant answer the question witness had asked, says: "Well, I was talking to Wan in a rather low tone of voice, and I asked him if he knew that Wu was going to dinner. He said that he did. I asked him if Wu was at the mission house when he arrived there first that night, and he said that he was. I asked him where he left his brother and he said at the moving-picture theatre, and I asked him where he went after leaving his brother, and he said that he went to the Port Arthur and the Republic Cafés, and I asked him what did he go there for, and he said that he was looking for Raymond. I asked him, 'Who is Raymond?'" And he said that he was a young Chinese waiter. I asked him, "Did you see him in the Port Arthur?" He said, "No." I asked him, "Did you ask if he was there?" And he said "No; they were busy; there were too many customers." I asked him if he asked for him in the Republic, and he said he did. I asked him if he knew where Wu was going to [fol. 97] dinner that evening, and he said yes; he did not know the name of the place, but it was on Pennsylvania Avenue, and I asked him if he knew where the cafe was on Pennsylvania Avenue, and he said "Yes." I said, "Why did you go back to the mission a second time?" He said he came out to ask Wu to go to the theatre with him. I said, "Why was it necessary for you to come out to the

mission house, away out here, the second time that night, when you knew Wu was downtown?" And that is where he said that he would not answer any further." \* \* \* "Well, he sat and rolled his eyes when I asked him why he came out to the house the second time, why he did not go to the cafe instead of coming away out to the house, and he sat there and he rolled his eyes at me, and Burlingame said, "Answer his question," and then he turned to his brother and started in the Chinese language, and Burlingame said, "Here, don't speak Chinese. Answer Kelly's question." Then he raised up with a coat hanger, and Burlingame caught him on the shoulders and he said, "We don't want anything like that here." This was about one o'clock in the morning, and we left somewhere around four o'clock; not much was said after four o'clock, just talking; Burlingame objected to defendant talking in Chinese because he wanted him to answer question; requested him once and then sat him down in a chair; did not hear defendant say that he had nothing to say, that he was not guilty; witness did not go to sleep, but was pretty sleepy, had been riding trains for a week, with very little to eat.

In regard to the discussion between the major and defendant about the handwriting, witness said: "The only discussion I heard was when he showed him the different specimens of the handwriting; he looked at it, and Wan said, 'That looks like my "g." ' No; first he said, 'No; the "g" did not look right'; and the major said, 'Now, look at this loop on the "g" and the upstroke'; and then he said, 'Yes; that looks like my "g" ' ; and after he studied the writing a while his attention was called to the spacing between the name of 'Z. S. Wan,' and the spacing between the letters of 'T.' and 'T.' and 'T.' and 'Wong'; and after he looked at it a while he said that he thought it was his writing; and the major said to him, 'We do not want you to think anything about it'; and he paused a little while, and finally he suggested that it was his writing; that he wrote it." Before he presented that handwriting we had talked continuously about different parts of the case, about the handwriting, about who went to the bank with the check, whether his brother did so, if they hired a taxi cab at the Union Station, where he went after he left his brother, where he went after he left the mission house, why he bid the people good-bye, why he brought his brother from New York, why he smuggled him into the room at the hotel, if his brother did not go out the next morning and get him a syringe, and numbers of questions like that, and it finally led up to the handwriting; this was kept up right along; he said that night while they were in Union Station that either he or his brother went into the lavatory and met an unknown Chinese, and this unknown Chinese had given Wan the check and told him to go — the bank and get it cashed and bring the money back to him at the Union Station; and he said if his brother would go he would go; so he called his brother and the man hired a taxicab for them and they went to the [fol. 98] bank; so we asked Van if he saw a Chinaman there at the depot, and he said, "No; that he was not with his brother all the

time; that he left his brother, and that he had paid for the taxicab"; this was in the room on the third floor of the mission house that night; is not positive whether defendant gave the name of the Chinaman that night; this statement was made in the early part of the night, and the brothers had not talked in Chinese up to that time; witness did not go to the station with Van to locate the chauffeur. Towards the latter part of the investigation witness found out who the chauffeur was; after the inquest. On Friday afternoon in the Dewey Hotel, the day before the trip to the mission house, Inspector Grant had been out of the room some little time, and he came back. I was in the room and Burlingame was in the room. He sat down beside the bed, and he started to talk to Wan. He told Wan—he asked Wan who went to the bank: "Tell me who went to the bank; go ahead, Wan, and tell me who went to the bank." He says, "The check has nothing to do with the murder"; and Wan answered, "If you find the man who went to the bank with the check, you will find the murderer;" and Inspector Grant said, "Well, we know who went to the bank with the check," he says, "your brother Van went; he told me." So Wan lay down on the bed and started to cry out that way, "It is a lie; it is a lie; my brother tell you nothing," and he pulled the covering up over him. Witness remembers seeing the stenographer taking notes at the mission house Saturday night: took defendant from the mission house to No. 10 station between 4 and 5 o'clock Sunday morning; at the station house, in the early part of the night of February 9th, K. S. Wang was there; witness located him in New York through Mrs. Bartels, who told witness he had been to see Van a couple of days or a week before the witness brought him back to Washington; Wan had not spoken about him. Witness does not recall a bloody handkerchief being shown defendant at the mission house Saturday night; a pistol was shown him on the third floor; thinks it was witness' pistol, not positive; we asked defendant if he was there when the shooting happened, if he did any of the shooting; and he said he was weak and could not shoot a pistol; he tried to pull the trigger of the gun given him, put one finger over another and did not pull it; witness thinks he handed Inspector Grant his revolver, but does not recall Grant tapping defendant upon the knee with it; did not hear anyone tell Wan he had his fingerprints; did not hear Grant say the fingerprints they had were heavier than those of defendant, evidently those of a larger man; did not hear any of witness' party suggest to defendant he should say that Wu had killed Hsie and Wong and then that he, the defendant, had killed Wu in self-defense, it would be an easy case for him.

Witness was not present when the alleged confession was signed at the jail; was present at No. 10 station house Tuesday morning, February 11th, a little after 10, when various questions were submitted to defendant, and the stenographer was there; Burlingame did most of the questioning at defendant's request; thinks defendant got out of the bed and sat on the side of the bed.

Thereupon the signed confession of defendant was offered in evidence, and counsel for defendant objected to its admission on the



ground that it had not been shown to be a voluntary confession, but, [fol. 99] on the contrary, was shown to be an involuntary confession, on the other grounds previously stated to the court, and upon the further ground that it had not been proved that the statement offered is a correct stenographic copy of the statement made; thereupon the court overruled the objection, to which action of the court defendant prayed an exception, which was duly allowed. Thereupon the confession was read to the jury as follows:

"STATEMENT OF Z. S. WAN MADE TO DETECTIVE SERGEANTS GUY E. BURLINGAME AND E. J. KELLY IN WITNESS-ROOM OF TENTH PRECINCT STATION ON FEBRUARY 11, 1919

Burlingame: We would like for you to make a statement. Your statement must be voluntary, and if you make it I want to tell you that it will be used against you in court. You do not have to make a statement unless you want to. I just want to inform you of your rights in the matter.

Wan: Suppose you ask questions; I can answer better.

Burlingame: How long have you known Mr. Wu?

Wan: I have known him since I came to this country. He came over on the same steamer with me.

Burlingame: How long ago was that?

Wan: About three years.

Burlingame: How many times in that three years have you seen him?

Wan: Two or three times.

Burlingame: About the early part of December, or just a little before Christmas, did Mr. Wu write you a letter?

Wan: Yes.

Burlingame: What did Mr. Wu say in that letter?

Wan: He expect- me to come to Washington to visit him.

Burlingame: Did you come at that time?

Wan: I did not; but he afterwards sent me a telegram.

Burlingame: About when was that?

Wan: Before Christmas.

Burlingame: You remember just what the wording of the telegram was?

Wan: It said 'Awaiting your arrival.'

Burlingame: Did you come to Washington at that time?

Wan: I want to tell this; just the three years we saw each other he come to New York to see me.

Burlingame: When did you come to Washington?

Wan: I come here on Friday, the twenty-fourth.

Burlingame: Now, did you remain at the mission as Mr. Wu's guest until Monday, January twenty-seventh?

Wan: Yes.

Burlingame: Then did you say good-bye to Dr. Wong and Mr. Hsie? Did they think you were going to return to New York?

Wan: Yes.

Burlingame: Then where did you go?

Wan: I went to Harris Hotel and rented room.

Burlingame: Now, did Mr. Wu make a proposition to you about getting some of the mission money—about getting a check?

Wan: When I was at the mission.

Burlingame: And what did he say?

[fol. 100] Wan: He just said I could get some money. He figured like that way.

Burlingame: He said he wanted to get some of the mission money?

Wan: Yes.

Burlingame: And how did he say he was going to get it—by check? Did he say get one of the mission checks?

Wan: Yes.

Burlingame: And who did he say would go to the bank and cash it?

Wan: That time he didn't say.

Burlingame: After you rented a room at the Harris Hotel did you send a telegram to your brother? Did you ask him to meet you here in Washington?

Wan: Yes.

Burlingame: Did he come?

Wan: No.

Burlingame: Did you send another telegram to him on the next day, Tuesday, the twenty-eighth, and if so, what did you say to him in that telegram?

Wan: I say "Just come immediately. Throw away your work."

Burlingame: Your brother Van came in reply to that telegram?

Wan: Yes.

Burlingame: What time did he arrive?

Wan: Late Tuesday night.

Burlingame: And he remained there at the hotel with you until you and him left for New York?

Wan: Yes.

Burlingame: What was your intention then in regard to Van; what were you going to have him do?

Wan: I think he might help us.

Burlingame: Did Wu mention about having your brother help to get the money?

Wan: Yes.

Burlingame: Did Wu come to the hotel to see you? How many times did Wu come to the hotel to see you?

Wan: Monday he did not come.

Burlingame: Did he come Tuesday?

Wan: Outside we met Tuesday.

Burlingame: Did you see him again Wednesday?

Wan: Yes.

Burlingame: What did he say?

Wan: Tuesday he tore off the check.

Burlingame: Out of the mission check book?

Wan: Yes.

Burlingame: Did he bring the check to you?

Wan: He did not show me the check and he wanted my brother to hurry up and come and I sent telegram that night, after 5 or 6 o'clock.

Burlingame: You saw Wu again Wednesday?

Wan: Yes.

Burlingame: What time of day?

Wan: Early afternoon.

Burlingame: What did he say?

Wan: He said Dr. Wong had found out the check had been stolen from the mission check book.

[fol. 101] Burlingame: Did he say that Dr. Wong had said anything to him about it?

Wan: He said he was blamed.

Burlingame: Did Mr. Wu say anything to you then that Dr. Wong had blamed him for the missing check and that he was about to send him to China in disgrace?

Wan: Before that he thought he would lose his place. I don't know what was the connection.

Burlingame: And he told you on Wednesday afternoon when he came to see you that Dr. Wong had missed the check from the mission check book and had blamed him for it and that he was about to be sent back to China disgraced; is that it?

Wan: I don't know; he don't say that.

Burlingame: Just what did he say?

Wan: He said Dr. Wong found out the check and had blamed him for it.

Burlingame: Anything else? Did he say Dr. Wong had sent for police?

Wan: He said Dr. Wong had blamed him for it and had called up the police. He said he thought Hsie had told Wong.

Burlingame: Did he say anything about you going over to the mission house that night?

Wan: Wednesday?

Burlingame: Yes. What did he say?

Wan: He said, you come over to-night and we got to fix the check.

Burlingame: Did he tell you he was going out to dinner?

Wan: Yes.

Burlingame: Did he tell you Dr. Wong and Mr. Hsie were going out to dinner, too?

Wan: Yes; that is why I went over.

Burlingame: Did you have a key to the door?

Wan: No; Wu left the front door open for me.

Burlingame: Did he tell you what time he would be home to meet you?

Wan: He said he would be home as soon as he finished his dinner party.

Burlingame: You went to the mission at what time?

Wan: About 7 o'clock, when I met Li.

Burlingame: How long had you been in the house before Mr. Li came to the door?

Wan: About 10 or 15 minutes.

Burlingame: Where was your brother Van?

Wan: Brother Van in hotel.

Burlingame: Did you leave him in hotel or did he leave the hotel with you?

Wan: This time I leave him in hotel. Mr. Wu said he be back about eight or nine o'clock, I think, and he told me to wait.

Burlingame: During that time you were alone in the house?

Wan: Mr. Wu telephoned me to mission when I was in mission, between seven and eight o'clock.

Burlingame: What did he say?

Wan: He said he will be back after nine o'clock. I don't like to wait so long, and I went down to the hotel again.

Burlingame: Did you see your brother Van there?

[fol. 102] Wan: Yes.

Burlingame: What time did you leave the hotel next time?

Wan: About nine o'clock.

Burlingame: Did your brother Van go out with you?

Wan: Yes.

Burlingame: Then, where did you go?

Wan: I went to the mission.

Burlingame: Did Van go to the mission with you?

Wan: I told him I go see my friend.

Burlingame: Where did you tell him to go?

Wan: He went to the moving-picture theater and wait for me.

Burlingame: Did you tell him who your friend was?

Wan: No; I didn't.

Burlingame: Well, after you left your brother, Wan, you returned to the mission house. How long after you returned to the mission did Mr. Wu come in?

Wan: When I returned to the mission Wu was in.

Burlingame: What time do you think it was that you returned to the mission?

Wan: I say after nine o'clock.

Burlingame: Then, what did you and Mr. Wu do?

Wan: We went upstairs.

Burlingame: Which room?

Wan: In Mr. Hsie's room, second floor back. Hsie's office room.

Burlingame: What did you do there?

Wan: Then took out the check book—stub, you know, and he said you fill this stub.

Burlingame: And then, after you filled the stub, put T. T. Wong on the stub in the mission check book, what did you do?

Wan: At the same time he took out his check, which tore off on Tuesday.

Burlingame: Where did he have it—in his pocket?

Wan: I think in his pocket.

Burlingame: What did he do?

Wan: He put the date and stamp on the check.

Burlingame: Then, did you make out the check in the same room?

Wan: No.

Burlingame: Then where did you go?

Wan: We went downstairs in the kitchen.

Burlingame: Did you write the check in the kitchen?

Wan: Yes; on the kitchen table.

Burlingame: What kind of a pen did you use?

Wan: Fountain pen.

Burlingame: Whose pen was it?

Wan: I think Mr. Hsie's.

Burlingame: Where did Mr. Wu get the pen?

Wan: I think in his pocket.

Burlingame: Mr. Wu took out the fountain pen from his pocket that you think belonged to Mr. Hsie to write the check with?

Wan: Yes.

Burlingame: Did you finish the check then?

Wan: Yes.

Burlingame: How long after you finished the check was it before Mr. Hsie came in?

[fol. 103] Wan: I think about long time—quite long time.

Burlingame: What time do you think it was?

Wan: About an hour, I think.

Burlingame: Was that about an hour after you came to the house or after you had finished writing the check?

Wan: I can not tell. Long time it seems to me.

Burlingame: About what time you think it was when Mr. Hsie came in?

Wan: I think about something as late as 10.30.

Burlingame: Now, before Mr. Hsie came in what did Mr. Wu say to you about killing these men?

Wan: He did not say anything. You see we are at this house and he lit the fire in the kitchen.

Burlingame: What did he light the fire in the kitchen for?

Wan: Because I was feeling cold.

Burlingame: Now, did Mr. Wu say anything to you at the hotel about killing this man?

Wan: No; he did not say anything.

Burlingame: Now, when Mr. Hsie came in the house about 10.30 you heard him when he came in the front door?

Wan: I did not hear him. Wu heard first.

Burlingame: What did he say?

Wan: He said some one is coming.

Burlingame: Did Mr. Hsie come down to the kitchen?

Wan: Yes.

Burlingame: Up to that time did you see Mr. Wu have a revolver?

Wan: No.

Burlingame: Did Mr. Hsie say anything to you or Mr. Wu?

Wan: He did not say anything.

Burlingame: Did Mr. Hsie walk in the kitchen?

Wan: Yes.

Burlingame: Where was Wu?

Wan: Wu was walking—never sitting.

Burlingame: About where was he when Mr. Hsie came in the room?

Wan: Near the kitchen sink.

Burlingame: When Mr. Hsie came in the room he walked past Mr. Wu?

Wan: Yes.

Burlingame: What did Mr. Wu do?

Wan: I think Mr. Wu got out revolver from right-hand side pocket and he shot.

Burlingame: How many times?

Wan: I think about one or two times. I don't remember.

Burlingame: Did Mr. Hsie fall?

Wan: No.

Burlingame: What did Mr. Hsie do?

Wan: He walked to the furnace heat room.

Burlingame: Walk or run?

Wan: Partly run.

Burlingame: Now, when Mr. Wu fired one or two shots was Mr. Hsie's back to Mr. Wu?

Wan: Yes.

Burlingame: Mr. Wu fired at Mr. Hsie's back?

[fol. 104] Wan: Yes.

Burlingame: Then he partly ran—as you expressed it—to the furnace room?

Wan: Yes.

Burlingame: What did Mr. Wu do?

Wan: Mr. Wu follow him—ran in the furnace room behind Mr. Hsie.

Burlingame: Did you see what was done there?

Wan: No; I didn't see.

Burlingame: Did you hear any more shots?

Wan: I believe I heard some.

Burlingame: How many shots did you hear?

Wan: I think about one.

Burlingame: Did Mr. Wu come back out in the kitchen?

Wan: Yes.

Burlingame: Did he leave the door open or did he shut the door between the furnace room and the kitchen?

Wan: He shut the door.

Burlingame: What did he do with the revolver?

Wan: He held it in his hand.

Burlingame: What did he do with it?

Wan: I think that time he looked at the revolver and so on.

Burlingame: Did he put any bullets in it?

Wan: I think he put something in it?

Burlingame: Where did he get the something he put in it?

Wan: I think from the big drawer in the corner in the kitchen cabinet.

Burlingame: Then what did he do with the gun?

Wan: He put it in his pocket.



Burlingame: Then what did he do next?

Wan: He kept quiet a little while.

Burlingame: Did he set down?

Wan: No; he walked around the kitchen for a little while without saying anything.

Burlingame: Did you ask him why he shot Mr. Hsie—did you say anything to him?

Wan: No; I didn't say anything to him. Afterwards he said to himself—but not to me.

Burlingame: What did he say?

Wan: He said he hate this fellow very much.

Burlingame: Afterwards did he set down and talk with you?

Wan: Yes.

Burlingame: What did you talk about—about the check?

Wan: Yes.

Burlingame: What was said about it?

Wan: We discussed the check again—about getting money on the check. He wanted me to go get money.

Burlingame: Was anything said by either one of you about him having shot Mr. Hsie?

Wan: I was just scared at time. I did not feel bad. I have no connection with Hsie.

Burlingame: You both remained in the kitchen and discussed how to get the money on the check without anything being said about the shooting of Mr. Hsie?

[fol. 105] Wan: Yes.

Burlingame: And you remained in the kitchen until Dr. Wong same in?

Wan: Yes.

Burlingame: How long after the shooting of Mr. Hsie did Dr. Wong come in?

Wan: About ten or twenty minutes. At that time I think he killing Hsie might be for some personal enemy.

Burlingame: Between ten and twenty minutes after the shooting of Mr. Hsie, Dr. Wong came in. Did you hear him as he came in the front door?

Wan: Wu heard first.

Burlingame: What did he say?

Wan: He said here comes old Wong.

Burlingame: Did Mr. Wong come down to kitchen immediately?

Wan: He first went upstairs.

Burlingame: You could tell by the sound that he went upstairs first?

Wan: Yes. He went in the other room first floor and always look at the letters and so on. Every night when he comes back he goes to the back room at the first floor and look at the letters on the desk.

Burlingame: Then, where did he go?

Wan: He went upstairs, I believe.

Burlingame: How long did he remain up there?

Wan: Not very long—about ten—not over ten minutes.

Burlingame: Then he came down in the kitchen where you and Wu were?

Wan: Yes.

Burlingame: Now, when Dr. Wong came in the kitchen, where was you?

Wan: I was sitting at the kitchen table, near the gas range.

Burlingame: Where was Wu when Dr. Wong came in?

Wan: Wu was standing near the place where I told you before—kitchen sink.

Burlingame: About the same place he stood when he shot Mr. Hsie?

Wan: Yes; almost the same place.

Burlingame: What did Mr. Wong say when he came in the kitchen—did he speak to Mr. Wu?

Wan: He did not speak to Mr. Wu when he came in. He speak to me. He said, "Hello, Wan, you come back again"—this last part—come back again—he did not say that, Wu fired.

Burlingame: He did not have time to finish?

Wan: No.

Burlingame: How many shots did he fire then at Dr. Wong?

Wan: I think one.

Burlingame: What did Dr. Wong do?

Wan: Dr. Wong turned around and rushed upstairs. Wu struggled with him.

Burlingame: Where?

Wan: Wu followed him upstairs and struggled with him.

Burlingame: You remained in the kitchen?

Wan: Yes.

[fol. 106] Burlingame: What could you hear upstairs after Dr. Wong rushed up the steps with Mr. Wu behind him; what did you hear?

Wan: I heard chair fall and glass break.

Burlingame: Did you hear any more pistol shots?

Wan: I heard something; I don't remember very well. I heard pistol shots.

Burlingame: How many?

Wan: I think two or three.

Burlingame: After they went upstairs?

Wan: Yes.

Burlingame: Then did you hear anything fall—like body falling?

Wan: No.

Burlingame: Where did Mr. Wu go then; did he come back down in the kitchen?

Wan: No; after waiting long time.

Burlingame: But he did come back down in the kitchen.

Wan: Yes. Then at that time he came down in the kitchen he had changed his clothes.

Burlingame: How was Mr. Wu dressed when he shot Mr. Hsie and Dr. Wong?

Wan: He was dressed with black suit, yellow vest, collar on.

Burlingame: Now, after he went upstairs you say he remained some little time; then you say he changed his clothes. What was he wearing when he came downstairs?

Wan: Just like he was when he laid there in the basement.

Burlingame: He had taken off the black suit?

Wan: Yes.

Burlingame: What did he say when he came downstairs?

Wan: He laid the revolver on the kitchen table. He said he wanted me to sit over on the other side of table; he wanted to talk to me. He wanted me to move at end of table near him.

Burlingame: What did he say?

Wan: He said we both killed Wong and Hsie. I said I did not kill them.

Burlingame: Then what did he say?

Wan: He said he wanted me to sleep with *me* tonight.

Burlingame: What else did he say?

Wan: He asked me to sleep there that night with him, and in the morning he said, "You go to bank with the check to get money and I will stay at the mission house to answer the telephone in case the bank call up."

Burlingame: What did you reply to that?

Wan: I said I didn't like to sleep there.

Burlingame: Then what did he say?

Wan: He gets mad.

Burlingame: Did you get angry, too?

Wan: I got idea he killed Wong. I thought he killed Wong, but I did not say that. That time when he told me I changed my mind and I said, "All right."

Burlingame: Did you pick up the gun from the table?

Wan: Yes; after while.

Burlingame: Did you talk about going to the bank with the check? [fol. 107] Wan: No; I didn't talk about it. He was sitting there, just thinking, and I took two bullets from that drawer and put them in the gun.

Burlingame: Did he see you put the bullets in the gun?

Wan: No; I don't believe he did. I took the bullets first before I picked the gun.

Kelly: Where was Wu?

Wan: Wu was sitting at the east end of the kitchen table. I was sitting at the north end of kitchen table.

Burlingame: Did you get up from table and go over to drawer and get the bullets?

Wan: I just got up and walked around. I walked around the room and picked two bullets out of drawer and then walked around the room a little more, and about a few minutes later I picked the gun up and put the two bullets in the gun.

Burlingame: What did you intend to do with those two bullets in the gun?

Wan: I intended to kill him.

Burlingame: Why did you intend to kill Wu?

Wan: Because he kill Wong; I think that awfully bad.

Burlingame: Did he say anything to you about going to the bank after Dr. Wong and Mr. Hsie were killed?

Wan: He said we both killed Hsie and Wong.

Burlingame: Did you have any more talk about getting money on the check?

Wan: No; we keep quiet. Nothing interesting at that time, you see.

Burlingame: Both you and Wu were in the house?

Wan: Yes.

Burlingame: Now, tell just what happened.

Wan: I say, "Mr. Wu, I want to talk to you." I was sitting at the end of the table. I said, "Let's go to the furnace room," and he wanted to talk, and he says, "We can talk here," and I didn't say anything. Later on I said, "Let's see the furnace heat." I wanted him to go to that room. Then he stand up and went over there. He knows I didn't know how to put coal in that furnace. He walk in the furnace room, and then I take pistol lying on the table and I followed him in.

Burlingame: Did he walk past Hsie's body?

Wan: Yes. First I put the pistol behind me, when I followed him in.

Burlingame: Then what did you do with the pistol?

Wan: Then Wu see furnace heat, and then Wu come back toward the kitchen from the furnace—his face toward the kitchen. Wu go in furnace room first and I behind him. Wu went in and looked at furnace. Wu says, "Heat all right." So he turns back, and I stood still. He came back past me, and then I shot him in the back.

Burlingame: Did he fall?

Wan: He did fall.

Burlingame: Then what did you?

Wan: Then I shot him again.

Burlingame: When he was lying on the floor?

Wan: Yes.

[fol. 108] Kelly: How did he fall?

Wan: He fell face downward. I don't know whether I killed him or not yet. When I shot second time—I got two bullets—I put the gun right against his body and shot again.

Burlingame: Then what did you do?

Wan: I pushed his body a little bit. I don't remember very well, but it seems to me I did move his body a little bit. When I shot him the first time he fell and then I moved his body a little to see where to shoot him again, and then I fired the other shot.

Burlingame: Then what did you do with the gun?

Wan: I put the gun on the chair. I used two fingers when I shot. I have not enough strength—I have to use two fingers [demonstrating by holding forefinger of each hand close together to pull trigger].

Burlingame: Where was the chair that you put the gun on?

Wan: Over near the wall.

Burlingame: Then what did you do?

Wan: I went upstairs.

Burlingame: Did you get any blood on you?

Wan: I think I got a little on my hands.

Burlingame: Did you wash your hands?

Wan: Yes; in the kitchen.

Burlingame: Did you wear your glasses all the time you were in the house?

Wan: Yes; I wore my glasses all the time.

Burlingame: What did you do after you washed your hands?

Wan: I don't know whether I did or not, but I believe I turned off light in kitchen.

Burlingame: Then what did you do?

Wan: I went upstairs and saw Dr. Wong's body laying on floor with one foot up [illustrating by raising one leg].

Burlingame: Then what did you do?

Wan: And when I saw Dr. Wong's body lying that way I cried a little bit and put on overcoat and came out.

Burlingame: And where did you go?

Wan: When I walked along street I didn't know what I was going to do at that time. I walked a few blocks and missed my way, but I got on street car and came downtown and met my brother, Van, at the theatre—a very noisy place. I met Van near the theatre, which I think is Garden.

Burlingame: Where did you go then?

Wan: Van and me go to hotel.

Burlingame: Did you tell what happened?

Wan: I didn't tell him anything.

Burlingame: Did you tell him after you got to hotel?

Wan: I didn't tell him anything. I said I want his hand around me.

Burlingame: Did you remain in hotel the rest of that night?

Wan: Yes.

Burlingame: You have told us that you wrote the check on the kitchen table at the mission house before Mr. Hsie and Dr. Wong were shot. What did you do with the check?

Wan: Wu fixed the letter and I wrote the check.

Burlingame: What did you do with the letter and the check?

Wan: Put them in my pocket.

[fol. 109] Burlingame: When you left the mission house you had the check, letter, and Mr. Wu's card—did you take them to the hotel with you?

Wan: Yes.

Burlingame: The next morning, what did you do?

Wan: I called Van to go the bank and cash the check.

Burlingame: How did you go to the bank?

Wan: We got a taxicab.

Burlingame: Where?

Wan: Near the depot.

Burlingame: Who went in the bank?

Wan: Van. I was waiting outside.

Burli-game: How long was Van in the bank?

Wan: About fifteen minutes.

Burlingame: When Van came out what did he say?

Wan: He said your check is no good. He says this check no good at all. They won't let me cash this check. He said he would have to be identified.

Burlingame: Then what did Van do?

Wan: Got in the taxicab with me.

Burlingame: Then where did you go?

Wan: Went back to the hotel. Soon after that Van and me take a train to New York.

Burlingame: Did Van return the check to you?

Wan: Yes, he did return to me. When he came out of the bank and arrived at the taxicab he handed me the check and the letter.

Burlingame: When was it you told Van what had happened?

Wan: After I was in New York.

Burlingame: Did you tell him anything about it on the train going to New York?

Wan: Nothing.

Burlingame: When Van handed back check to you what did you do with it?

Wan: I put it in my pocket.

Burlingame: What did you finally do with it?

Wan: I went to toilet room and tore the check and letter up and threw them down in the toilet on the train on the way to New York.

Burlingame: Just what did you tell Van; did you tell him anything when you reached New York?

Wan: I said my friend was very bad fellow.

Burlingame: Did you tell him who your friend was?

Wan: I do not believe I told him who my friend was. Just mentioned my friend.

Burlingame: Did you say what your friend had done?

Wan: I didn't make so clear like that.

Burlingame: What did you tell him?

Wan: I tell him my friend. I think I did mention Wu, but I don't remember whether or not.

Burlingame: Did you tell Van that you had killed Wu?

Wan: I think I did.

Burlingame: Now in this conversation between Wu and yourself about the check and getting the mission money, what was your understanding as to how much of the money you were to get and how much Mr. Wu was to get?

[fol. 110] Wan: I don't know, he did not say anything about this money.

Burlingame: What were you going to do with the money—bring it back to Mr. Wu?

Wan: Yes, bring it back to him.

Burlingame: All of it?

Wan: Yes, all of it—then he gives me some of it.

Burlingame: Did he say how much?

Wan: No.



Burlingame: Did you borrow some money from Mr. Wu?

Wan: Yes.

Burlingame: How much?

Wan: First time fifty dollars, second time, thirty dollars. He said he just give it to me. He says take that money, and I said no this won't do.

Burlingame: When was it he gave you check for thirty dollars?

Wan: On twenty-seventh, I think.

Burlingame: After Mr. Hsie and Dr. Wong were killed, did you or Mr. Wu take anything out of their pockets?

Wan: I don't believe I took any money from their pockets.

Burlingame: Do you remember whether Mr. Wu took any money from any of their pockets or not?

Wan: I don't know about it. Let me see, I think he took some money because when he came down stairs he had some money and he hand it to me.

Burlingame: How much did he give to you?

Wan: I think about ten or twelve dollars. He wants me to go to the bank and call taxi.

Burlingame: Did he say where he got that money.

Wan: No.

Burlingame: When you shot Mr. Wu did you take any money from his pocket?

Wan: I didn't take anything.

I certify that the foregoing questions and answers are correct and just as they were asked me and answered by me.

(Signed) Ziang Sung Wan, February 12, 1919."

Transcribed by J. T. Laws, February 12, 1919.

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Thereupon, PHILIP J. GANZERT, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that on January 29, 1919, about three o'clock, he repaired an Oliver type-writer at 2023 Kalorama Road. The witness identifies the photograph as that of the man he did the work for; witness says does not think he has ever seen the defendant.

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Thereupon, Mr. KING CHU, a witness on behalf of the United States, being first duly sworn, gave testimony tending to prove that he knew Mr. B. S. Wu, and on the evening of January 29, 1919, about 6 o'clock, after a class at George Washington University, witness and Wu went to the Oriental Café at Pennsylvania Avenue near 14th Street, and had dinner with two other friends; had no previous arrangements at all; met Mr. U. Shang Ly there, and later Mr. Jeffers joined them. "We left the restaurant a little before eight o'clock." At 14th and F Streets witness saw Mr. Wu take the Mt. Pleasant car and the two other gentlemen take the Georgetown car. [fol. 111] Walked along to his home on H Street. The witness

identified as Mr. Wu the photograph which Mr. Ganzert testified is the photograph of the man he did the work for. The other picture on the same photograph is the picture of Mr. Hsie. At George Washington University, witness attended with Mr. Ben Sen Wu classes in political science, comparative government, and witness identifies book marked "Li No. 1" as such a book as used by witness in the study of the Governments of Europe; identifies the signature of B. S. Wu in said book; witness states the assignment they had for the Thursday evening following the Wednesday he ate supper with Wu was the English Crown and ministry.

Thereupon, on cross-examination, the witness said that he met Mr. Wu at the Chinese Educational Mission in 1916, and attended the university with him, and went with him to the students' conference at Brown University in 1917. Witness had no previous engagement to have dinner with Wu that evening; it just came up after class that night when we left the school. The party was at the restaurant from a little after six until a little before eight o'clock; remembers the time the party broke up because Mr. Ly pulled out his watch and said it was pretty near eight o'clock. "we shall go to the bank to look up something"—to the Dupont National Bank.

Thereupon counsel for the United States offered in evidence the pictures identified by Mr. Ganzert and by Mr. Chu, and counsel for defendant objected on the ground that they were not material, which objection the court overruled, and allowed the defendant an exception. The pictures were then exhibited to the jury.

Thereupon counsel for the United States offered in evidence the notebook which had been identified by Mr. Kang Li from which a slip had been cut, and counsel for the defendant objected to the book being admitted in evidence, there being no evidence that the slip had been torn from this particular book and there being certain writing showing on the same page from which the slip was torn, the court admitted the book in evidence as showing that a slip had probably been cut from it, saying that the writing could be covered, and overruled the objection, allowing the defendant an exception; the book was then exhibited to the jury.

Thereupon the United States rested.

Thereupon counsel for the defendant renewed its motion to strike out the testimony of Mr. F. H. Chen on the same grounds stated at the conclusion of his testimony, at which time the court had stated the motion would be granted unless the testimony was subsequently connected up, as the district attorney had said it would be, which had not been done. The court overruled the motion, to which action the defendant prayed an exception, which was duly allowed.

Thereupon the counsel for the defendant moved that Deal Exhibits 1 and 2, the signature cards, be stricken out on the ground that defendant was never identified as the man who made the deposits, or connected with the deposits in any way, and that Mr. Diehl's testimony be stricken out on the ground that its relevancy was not shown at the time it was submitted, at which time the same reservation was made to the same statement by the assistant district

[fol. 112] attorney, that it would be connected up later, as in the case of Mr. Chen's testimony, which connection had not been made. Thereupon the court overruled the said motion, to which action the defendant prayed an exception as to the overruling of each motion, which was duly allowed.

Thereupon counsel for the defendant moved that the Government be required to elect between the four counts of indictment; thereupon the court overruled the motion and allowed defendant an exception. Thereupon counsel for the defendant moved that a verdict be directed in favor of the defendant on each of the first three counts of the indictment on the ground that there was no evidence to support either of the said counts, the said motion being made separately and severally as to each of the first three counts; and the court overruled each of said motions, to which action the defendant prayed an exception to the overruling on each of said motions, which exceptions were allowed.

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Thereupon, TSONG ING VAN, a witness on behalf of the defendant, being first duly sworn, gave testimony tending to prove that he is twenty-two years old; came to America in the fall of 1915 from Shanghai, China, landed at San Francisco and went to Delaware, Ohio, where he attended Wesleyan University for three years. Defendant is witness' brother; their names are spelt differently because in Chinese there are many dialects and they are pronounced different ways but in writing it is the same. Defendant came to this country in 1916, and joined witness at the above school; then went to Columbus, Ohio, to attend school. Defendant was not in business in China, but their father had been engaged, after he resigned from the Government, in the export and import business at Tien Tsin, near Peking; their father died twenty years ago. When defendant came to this country in 1916 "we had our own houses and money lent," does not know the amount of money in the bank; their mother did not wish them to be supported by the Government, so she arranged for all the money herself to prove for the education of witness and his brother. In the summer of 1918 defendant attended summer school at Columbia University; at that time mother sent \$2,000 and witness suggested to start business, "so we started and bought the theatre for \$1,000"; it was open two or three weeks; the witness and defendant both went to into it, and later witness dropped out and defendant went in with Wu; witness dropped it because of the Fourth Liberty Loan and Red Cross drive and the "flu." Witness was in Providence, R. I., working for the River Spinning Company, when the theatre was closed, returning to New York two or three weeks after the signing of the armistice. The defendant owed no money at the time the moving picture closed, "he loaned to so many people." Witness thinks he returned to New York in October, the picture theatre was closed at that time. Defendant was sick then, had caught the "flu"; recovered in two or three weeks and caught the "flu" again.

Their mother would send their letters in care of the Chinese Edu-

cational Mission at Washington, and packages and things were sent by her in care of Mr. Wu, at the mission. Witness did not see Dr. Wong, but his brother visited him in the Hotel Marseilles, at 110th Street, New York; about Christmas time, 1918, Wu sent Wan a telegram asking him to come to Washington to spend Christmas [fol. 113] with him, but Wan did not go because he was sick; afterwards several letters came, the last about January 15th, but defendant did not go until January 22nd. Defendant did not owe anybody money then; had loaned several people more than \$100; to S. C. Hung about \$150, to F. H. Chen and Mr. Freedman; "Chen, he owes us \$300;" witness then had about \$100; at that time mother was going to send them another \$500, but because we were sent to jail this money was sent to the legation, held by the legation. Mother sent us \$500 in October, 1918, and our sister's husband sent us a \$200 check as a Christmas present, Christmas, 1918. At that time witness had two pearl necktie pins and many jade pins; the pearl pins were in a little suit case; they belonged to Wan. Defendant came to Washington on January 22nd because Wu sent letter to him, because his landlady said he was sick and to go to the hospital, and because Wan wanted a change; received a telegram from Wan the following Monday, January 27th, about 7 or 8 o'clock; received another telegram about 7 or 8 o'clock on Tuesday, when witness returned from the Students' Club; received another telegram on Monday from K. S. Wang; when received the first one, did not come, "but second one I came because he wants me; I know he must be very sick, so I come"; arrived in Washington about one o'clock on Wednesday morning, January 29th, and saw brother at Harris Hotel; he was laying in bed and said his stomach was very painful; witness forgot to bring his syringe from New York, so went out to station and bought syringe, bottle of turpentine, and piece of soap; got pitcher of hot water, took syringe, and put teaspoonful of turpentine and soap water and served to Wan for his bowels; witness slept at the hotel that night; they did not get up until noontime, and witness dressed and ordered some breakfast in the room; Wan wanted some pineapple and witness sent colored bellboy and he could not get it, so witness went out himself; did not know the streets and walked past the station and did not get anything; on the way back met two Chinese fellows in front of post-office, and they insisted they saw witness in Vancouver, but witness told them he landed in California; they asked his name and told their names; the tall one was T. P. Wong and the other one Moy; T. P. Wong asked witness if he lived in Washington, and witness said lived in New York, but came because his brother sent telegram; witness asked him about stores, and he said "think you walk up Pennsylvania Avenue," so all three walked up there, and when started they talked another language which witness did not understand, so witness was disappointed and told them wanted to go back because brother was sick, excused himself, and returned to the hotel about 3 o'clock, having left after one; Wan was still in bed, and witness told him could not find pineapple, and why did not he go to New York, where could buy so many things easy, and where had a room, and he promised

would return tomorrow morning. About five o'clock defendant got up, witness helped him dress. Defendant said he wanted to see his friends, so he left hotel about six o'clock; came back when witness was in the room looking at some post cards and books which Wan had bought when he visited Dr. Wong in Washington; Wan came back to hotel about eight o'clock; said his stomach was so pain he lie in bed; witness told him it was nice to undress and go to bed, so helped him undress and he stayed in bed; asked him if he wanted [fol. 114] anything and he said no, and told him witness wanted to go to movie. He said alright, and asked witness for some small change, and witness gave him two dimes, and he said if he wanted anything he could call the bell boy. Witness went to moving picture somewhere around 8th Street, and came back a little after eleven o'clock; Wan was in bed in the room and said he felt better and wanted to go out for some fresh air, and though witness did not feel like it, helped him dress, and both went for a walk, because he wanted fresh air; when defendant was sick, he did not eat regular, and the pain came irregular; sometimes he felt better and sometimes worse, and when he felt better he wanted to get up and go out for a walk; walked past Union Station straight-away a few blocks and came back; it was too cold; came back about twelve or a little after; a colored bell boy took them upstairs; remembers it was a little after twelve because, before returned to the room, witness saw lights in the street and went to a lunch room across the street and bought some sandwiches; defendant did not leave the room again that night; they got up about eight o'clock Thursday morning, and witness told Wan had better leave for New York, and both went to station about nine; witness told Wan to sit on the bench, and he was sitting facing the Red Cross booth, and witness went over to find information about trains to New York. When witness looked in the men's waiting room, see the two fellows, T. P. Wong and Moy, back of witness; so witness went to men's room, where T. P. Wong said he had check for us to cash; said he had hard time in speaking, wanted witness to help him cash check; witness told him brother was waiting for him and we were ready to go back to New York; because he insisted, witness promised to go cash check with him, "and that time Moy, he left first—they talked something I did not understand—so Moy take taxicab first; I insisted I was in hurry, so we both came up and I left with T. P. Wong to get taxicab from station; he told me in men's room he wanted to cash Riggs National Bank, so I said to the chauffeur, 'Riggs National Bank'; T. P. Wong looks almost like defendant, but a little taller; witness' brother, the defendant, was not in the taxicab, on the way to the bank witness was given big envelope by T. P. Wong, who said if they asked anything just telephone to his home; witness did not open the envelope; when arrived at bank chauffeur showed witness way to go in there, and witness gave that big envelope in at little window. Witness had a little suit case, because all of defendant's necktie pins were in there. At first the man did not open envelope, took it inside, and witness waited there with a lady; after about ten minutes another clerk came out and said one fellow went to court and I have to wait until he

come back; later, the same fellow that took the envelope invited witness to go inside; witness said all right and went with him and sat beside the desk; was waiting there more than forty minutes; finally fellow inside came out from little iron house and sat down at desk and said he wanted witness' identification; witness told him he came from New York and have no identification; "but I said you can telephone to his home"; did not see the telephone; the man sitting at desk said, "Very sorry"; he seemed very polite; very sorry to let me wait long, and any time witness can show him identification he give the money, so witness came out of the bank, went direct [fol. 115] to the car; never saw the contents of the envelope. Witness left the bank and said to chauffeur to go back to Union Station; did not make a statement to his brother when he got back; went to him and told him go to find time-table and find there is train at eleven and eleven ten for New York; defendant was complaining, but witness did not answer him anything; he was complaining there was a train missed during witness's absence; both went to hotel and witness got suit case, and defendant paid money to clerk, then walked to station and went directly to the train; witness did not talk anything about being in bank. Arrived in New York between four and five, early, went to room, undressed defendant, and put him to bed; then went out to get two chicken legs to make chicken soup, and the landlady helped witness boil the chicken. After defendant finished eating witness went to Students' Club to supper and then went to see K. S. Wang in the student's dormitory at Columbia University. Returned to room where brother was in bed all night; witness fixed syringe for his bowels and went to bed. Friday witness got up about nine o'clock, went out for defendant's medicine, and brought him chicken and fish, and landlady helped cook all these things; witness ate at the club and came back to get defendant soup and fish and some toast, and when brother was eating he told witness Wu was dishonest; did not say why he was; then witness recalled the two fellows that insisted they saw him in Vancouver, and told brother met the two fellows, the tall fellow, T. P. Wong, and gave him description, because defendant landed in Vancouver with Dr. T. T. Wong, and defendant said according to the description he did not look like T. T. Wong, but like Chin. On Friday we stay in the room and play some peak-a-ackles; Friday morning witness went to bank for brother to have check deposited there, did not look at it, went to bank and told bank wanted money deposited there; bank clerk looked over check and saw was not signed, told witness was not signed, so witness said could he sign it for his brother, because brother was sick in the room; they said could not sign for him, so witness took check back, and at that time noticed it was \$30.00. Bank was United States Mortgage, on 125th Street west. Witness' brother stayed in bed most of the time Friday and did not get up.

Saturday, a little before nine, witness went out for bread and brought brother a newspaper, gave it to brother, and when came back his brother was reading and said three men at the mission were killed, and "Get me tablet and pencil"; said he wanted to send telegram to Kang Li, because Kang Li saw him at the mission; he said



at that time there wasn't anything happened. When he was reading, witness put on overcoat and heard some knock on the door, said "Come in," nobody appeared, so went to door and opened it, saw three tall fellows standing behind landlady; they pushed landlady in with pistols in their hands; when they come in they hold witness' hand and landlady went right away; one is Kelly and one is Burlingame; one pistol on each side; searched witness and later searched Wan; at that time witness so excited and Kelly wants witness to give pistol to him; told him never had pistol, so they started to search trunks and everything; brother was lying in bed; they pulled bed sheets away and wanted him to get up and witness said brother was sick, should not treat him so rough; Kelly got hold of witness' arm [fol. 116] and said if he said anything more would lock him up in the station; witness said he had no business to come to his room, he said he would throw witness out of room; defendant said, "Don't be rough." After they searched and did not find pistol, they put their pistol in their pocket and sit down; Burlingame asked Wan had he been in the mission house and see anybody and Wan said yes, he saw Kang Li; showed unfinished telegram and said was ready to go to Washington; witness told Wan to send telegram first, and then if Kang Li or legation wanted him to come, he come; Burlingame or Kelly said witness was the right one, strong and not sick, so most of the time they are after witness because he was standing, did not pay much attention to Wan at that time until Kelly went down and brought Kang Li, then they started to question Wan, who introduced witness to Kang Li. Wan washed his face and brushed his teeth and witness packed suit case and when Wan finished dressing, put his hand back and look through his pocket and ask witness where his money was and Burlingame said don't need money, the Government will pay if you will only come; witness said Wan was sick, asked if they wanted witness to come with him; and they said, did not need witness, will take care of Wan; and Burlingame told Li to carry his suit case; then they left. Wan told them he see in the paper and was in the mission and saw Kang Li about seven o'clock at the door; this was before Kang Li came up to the room.

On Monday, when witness was dressing, Kelly and Armstrong, New York detective, came in room without knocking; Kelly said Wan very sick and want witness to come to Washington and nurse him; so witness dressed and came with Kelly. On way to Washington Kelly asked witness if it was custom to put anything over dead one's face; witness said did not know, but his elder brother died and had nothing on his face; arrived in Washington about dark; Burlingame was waiting at the station, and they took witness in machine and drove long way and stopped in very lonely street that looks like health department. [It is agreed that that place was 409 15th Street.] There Burlingame and Pullman shake hands with witness, then went out and in about ten or fifteen minutes came in; Grant pulled chair up and sat facing witness and asked him how did he happen to kill them three; witness said he did not; Grant said he know witness is the right one, he is so strong and before kill them put up a big fight; witness said did not kill them; there were

so many questions, and Grant wanted witness to admit how he killed them; then one colored and one white people come in; they don't say anything, but shook their heads; Grant said witness had changed his clothes since was in Washington, said fellow went to bank with black coat and velvet collar; witness said these the clothes he wore when in Washington and never have such overcoat; does not remember whether was asked if he was in Washington on the 29th, because most of the time was so excited did not know what witness answered, yes or no, or not; afterwards, four or five fellows come to the room, did not say anything to witness; Pullman questioned witness, insisted he lived in Chinatown; witness said never lived there, only went there once in touring car. Grant said witness belonged to one of the tong gangs, witness said did not, was student. Did not have anything to eat when left New York, and asked for things to eat; wanted to go to sleep, and they said if would tell how [fol. 117] kill them would let witness eat and sleep; did not get anything to eat; witness asked Kelly to see his brother, and he said would see him after finished telling how witness killed them; said would see brother soon, but never did; they used all kinds of cursing and swearing and pinched and shoved witness and said he was the one; was strong and brother was sick and could not put up the fight and kill the three; questioned witness the whole night, and later sent him to hotel; does not know at what time, but soon after they got there it is daybreak. Grant said the legation was after them all the time because the three dead men were distinguished Chinese, and they must get somebody; that night they permitted witness to sit down.

The following Saturday night Kelly, with another fellow, came to witness' room and took witness for a walk for fresh air; got in a machine, drove a long way and stopped in the dark where some people were waiting; Kelly walked first and witness followed and before witness got to the door was caught in a rope around the feet and almost fell, and Kelly said witness is acquainted with the place; Kelly asked witness if he knew the place, and witness said seems like health department where they took him Monday night; and he said no, it is the mission, where the people were killed; at that time they did not tell witness would see his brother, but that they would take him for a walk for fresh air. Saw brother on the second floor; before saw his brother, Kelly showed witness pictures of the dead people and took him down in the basement; saw brother on second floor and shook hands and called witness "third brother," in Chinese. Witness asked him how he was treated at the hotel and brother said very mean, and witness turned round and called Major Pullman a big lie, because he told witness he was superintendent of Sunday school, never told a lie, and he was blushed, and Kelly grasped witness' arm and told him to shut up. We were all seated and heard noises and Pullman said that is ghosts of the dead people, "because you are guilty you hear noises"; at that time lots of noise in front, a knock at door, and Kelly went down and came up and said reporters trying to get it. On second floor, was shown Dr. T. T. Wong's pictures, which Pullman said is moving, seems like coming

down, looking at both of you, shows you both are guilty. Not very long after they took us to third floor and witness took a cushion which they had let him give his brother on the second floor. On the third floor there was Pullman, Grant, Kelly, Burlingame, and Laws, who all sit down and "want us to get in the middle"; they started to question. Grant told witness to tell how he killed them, that witness was strong, physical fit, and healthy, and must be the one that killed them; witness said he did not; then Grant turned to Wan and said, "Kang Li saw you in the mission, why was you there?" Wan said Wu invited him to come, and Grant asked him how he got in; Wan said door was open, never locked; Grant insisted Wan had key, and if not must get in somewhere; Wan said if he did any killing would not open the door and let people know he was in the house; then Pullman stand up and point finger at Wan's face and say he was a cold-blooded boy, a cold-blooded Chinaman, "You know what you did; you are very sick, in dying condition, why don't you say something and let your brother go? Your little [fol. 118] brother has a good future; we just want you to say something and let him go out; you tell me you are Christian and love your brother, why don't you say it and let your brother go?" Wan said did not kill them; Pullman said "You did, you know you did, just don't want to tell how you kill them." Then they took five or six clips, all Wan's writing, and Major Pullman started to ask Wan was it his writing; Wan said yes the second one, third one, fourth one, and several other ones; last one had two lines of writing, Wan said one line his, other one not; Pullman said it was his writing and look at the spaces, it is like his; Wan said it was not, took slip and measured; it is narrower and not his writing, not his space; Pullman said, "Look at the g, it is like yours"; Wan said no, it was not his; Pullman said consider self like handwriting expert, could tell which part he wrote; Wan said little curve not like his, does not look like his, his has curve but other one straight, and said it was not his writing; Pullman said about the "w," he said "w" is Wan's writing because both are vertical; Wan said it is vertical but a different way of writing; Pullman said the "n" is Wan's; Wan said it is vertical but not the same writing; witness does not know whether they showed Wan the stub, witness was afterwards shown the stub [being the \$5,000 check stub identified as having been found by Major Pullman in the mission house the previous Sunday] is familiar with the defendant's handwriting, and, the witness being shown this stub, says the writing on it is not his brother's handwriting.

That night they curse and mock and point their fingers at the face of witness and his brother, and call them murderers, yellow rats, Chinks, skunks, and all other names, and at the same time pinch them and push them and shake them, and defendant many times asked them to let him alone; Grant said would not let him alone unless he tell how he killed men, and Grant said, "It is not killing in cold blood; it is self-defense"; said defendant can say that they were three and he is one; maybe they tried to kill defendant, so he grabbed pistol from Wu and shot them, and everybody would believe that because pistol is Wu's and defendant has not any pistol;

another way, Grant said, Wu killed the other two and because Wu killed Dr. Wong and Hsie, Wu after killing other two tried to kill defendant, so defendant grabbed pistol and kill Wu; everybody will think that is right because pistol is Wu's and not defendant's. Wan said was innocent, did not kill them; Grant said of course he did, they knew he did, "just because you don't want to tell us." Grant and Pullman did the questioning when witness was there; after Pullman left they all started to be very rough and push witness and defendant; would not let them go to the toilet or get water to drink, and at that time defendant's stomach was very pain, so he could not stand straight and rested his elbow on witness' shoulder; witness picked up the cushion on the floor which had brought up from second floor, offered it to defendant, and Kelly take it and throw it away; said "Don't think you are home, you are in our power, you have got to do what we say"; Wan begged them to let him alone, said he was innocent; Grant said never let him alone until he admit he kill them; if he would tell them, let him go, let him get off easy, it was only self-defense case.

Witness wanted to go to toilet and they did not let him go unless he said something; Pullman said to Wan, "See how your brother [fol. 119] is suffering, why don't you admit; you are in a dying condition, you know you can't live long; why don't you let your brother go out; you see how he suffers; you say you are Christians and love your brother, why don't you admit that you know who killed three men and tried to put it on younger brother—I mean make your younger brother suffer." Kelly took witness out of room to toilet; as soon as stepped out, Kelly turned to witness and said Wan admit; witness started to jump back in room and said he was lying; Grant said, if Wan not guilty witness don't have to jump in and say that, "just to influence Wan not to admit"; so they didn't let witness go to toilet. Kelly took a big yellow envelope up, undid the string and pulled pistol out and gave to Pullman, who asked witness if ever see it; witness said never; Pullman first showed it to Wan, showed him the trigger, opened chambers and showed two empty shells in it, closed chamber and told Wan to show if he could pull trigger, and Wan took it and stretched out his hand and pulled the trigger, which is hard to pull, and Pullman said, "Look how he shoots without aim \* \* \* that is the way he killed them." Then he asked witness to hold it, which he refused to do, because Grant said they got the fingerprints, but not witness or his brother's, they are a very big size; witness don't want to hold it and get fingerprints on it. They kept on questioning both to admit how they killed them, and defendant many times begged them to leave him alone, and Grant said, "We won't let you alone until you admit how you kill them," and also that they had no sleep since brought defendant from New York, and legation is after them and they have to get somebody; Wan said he was innocent, and Grant said he knew he killed them, "just because you don't want to tell us," and Wan said, "You can kill me; I have nothing to say"; and Grant said don't want to kill him, just want him to say how he kill them, and if he

did not would receive worse than that; and he also said it was a good self-defense case if he would admit it; that was said three or four times that night; Grant took the pistol and hold the muzzle and poked Wan with it; "they first questioned us by turn, first Kelly and Burlingame, then Grant"; then it is Burlingame's turn, and while Kelly was sitting near the window Grant lay on the bed, and Wan asked Burlingame to let him go get drink and Burlingame said he never would, never would have it until he tell; said not to think this is his home, he was under their power and better tell how he kill them; Wan said if he did not give him water to drink would not answer questions, and Burlingame took a clothes hanger he had in his hands and said he would make "you two answer my questions," and hit Wan over the hand, and Wan tried to grab the clothes hanger, and Burlingame stand up and use his left hand and push Wan by the shoulder, and then Wan fell, first on the chair, then fell again on the floor with the chair; this noise woke up Grant. At that time Wan's stomach was very pain and he could not stand straight; rested his elbow on witness shoulder and beg them many times to let him alone, and Grant said would not let him alone unless he tell how he kill them, and Wan said, "I am innocent"; when Grant got up from the bed he said he could not get anything from "two skunks; we better lock them in the dungeon," and Wan tried to put up a fight, and they took witness and his brother downstairs, and at that time witness talked with Wan in Chinese, saying, "Wan, [fol. 120] we better one of us say something; they never let us get through"; that is all witness said to Wan; said that because they threw Wan on the floor, and he begged them to let him alone, and they said never would and wants him to admit self-defense, and witness said, "Just say 'yes.' They send us back to the hotel and give us food and then don't send us to dungeon." They took witness and brother to the police station; witness was locked in a cell and brother in another room, does not know what room; went to the jail February 12th; one day Burlingame came; brother lay in the bunk in the cell, could not get up; did not eat a thing; Burlingame and Laws and Grant came with lots of paper sheets and told Wan to sign, but Burlingame said, "It is your statement," and witness told Wan to read it before he signed. Burlingame grasped witness' arm and put him in other cell, and after a few minutes Burlingame and Laws come out smiling, and when he left the cell I heard Burlingame say, "We got it," and did not hear any answer. At that time, when we sent in to ask for the doctor, they did not send any doctor until after witness' brother signed confession, then came Dr. Gannon and talked to witness a few minutes, "and he put us in the Red Cross room." Two fellows carried defendant to the Red Cross room, for he could not stand up and walk.

About latter part of December, 1918, or early part of January, 1919, witness had \$78.00 saving stamps, some of them belonged to defendant.

At the station house Sunday night, witness saw K. S. Wang and they brought witness from the cell; K. S. Wang talked to witness. On the previous Thursday, Mr. Grant said, "Dr. T. T. Wong," that

is the second time he told me, told the both of us, "Dr. T. T. Wong was threaten when he landed at San Francisco, and he summoned detectives to protect him." Thereupon, the district attorney moved that the said statement be stricken out and the court granted the motion, to which action the defendant prayed an exception, which was duly allowed.

On the Saturday night at the mission house, in a conversation with Grant, Burlingame, and Kelly, witness said he was in the bank, and Burlingame said witness was lying at that time and insisted witness said that Wan was with him; witness said he was not, it was T. P. Wong, that Z. S. Wan had nothing to do with that check; witness did at one time make statement to the detectives that he had been to the bank for Wan, witness had been to the United States Mortgage Bank in New York City for Wan.

Thereupon, on cross-examination, witness said, came to America in 1914, and his brother in 1916, and their mother always send them money, and brother-in-law send them some; always had money while here; sometimes the money was late; in October, 1918, mother sent Wan \$500, which he put in United States Mortgage and Trust Company; sister's husband sent each of us \$200 for Christmas gift, 1918; defendant never borrowed any money.

When witness arrived in Washington at the Harris House, just asked the elevator boy and said wanted to see Wan and he took him up and showed him the room; does not know the number; got up about 12 o'clock the next day, sent boy out to get some pineapple for brother, then witness went out to get it, and then met T. P. Wong [fol. 121] and Moy; T. P. Wong looked like brother only a little taller; does not remember whether he wore glasses; they wanted to show witness where to buy pineapple and after walked up to Avenue with them, witness excused himself and dropped out; came back and told Wan could not buy it; left them and did not expect or intend to meet them again; got back to hotel about three o'clock and Wan was in bed; witness went to theatre about nine o'clock; Wan left hotel about six and came back at eight and went to bed, and when witness came back, a little after eleven, was still in bed; then said wanted to go out for a walk and dressed; witness and defendant came back a little after twelve, can't tell exactly, and stayed there all night; next morning went to station about nine o'clock to find what time the train went; did not pay bill and take things over to depot because Wan was sick and we did not know how long would have to wait and if it is long, Wan said could go back; witness left him facing the Red Cross booth; Wan was not sick all the time, he was sometimes better and sometimes worse; that morning was much better and at first did not want to go out with witness and witness said, "Why don't you go and get some fresh air?" So both went to station. Did not pay bill because did not know how long would have to wait for train; witness started to ticket office, looked around and saw two fellows beckoning to him and went to them in the men's room; they said had a check to cash, have trouble in speaking and want witness to help them; at first did not tell what bank, because witness did not feel like to go, and because Wan was wait-



ing; witness knew them from having seen them the day before; had never seem them before that; witness went with the tall one, gone more than an hour, got back about twenty minutes to eleven. In the machine, Wong said if they asked anything at the bank "just telephone to my house," T. P. Wong's house; witness don't know if it was his check, never saw it, he gave witness an envelope, did not know what was in it, but feel there is something; witness handed this envelope in the bank, paying teller took it inside, did not see him open it, did not see him take out anything, witness was standing outside with a lady; the man went on back to the back of the building; witness did not hand the man a card, just a big envelope; the man came back and said the fellow went to court and they are waiting for him to come back and told witness to wait; afterwards fellow came out again, invited witness to go inside and fellow told witness to sit down, and when he wants witness' identification, witness told him he can telephone to this house, Professor T. P. Wong's house, because he told him in the machine if they wanted to ask witness anything to telephone to his house; witness did not know where his house was; witness was in the bank more than forty minutes; when came out, caught the machine, told chauffeur to drive back to station, where Wan was waiting, and gave back the envelope to T. P. Wong; stopped the machine before the post office but on the other side; witness paid the cab hire because that little fellow was standing there and when the machine stopped T. P. Wong got out and talked excitedly with the short fellow, which witness did not understand, witness saw them talking so paid the bill and went directly to the station; they are very excited; witness did not have any talk with them after that.

[fol. 122] Witness did not look at the check; the bank people did not tell him how much it was for, but told him would have to be identified; when witness left man gave him the envelope.

In the room in New York witness does not remember telling officers Burlingame and Kelly that Wan had returned to New York on January 29, 1919, and Wan did not tell them that he left on the 27th; Wan told Burlingame he was in the mission at seven o'clock and saw Li there; witness was so excited most of the time, they came in and pointed pistol at witness, "it never happened like that before." They asked questions like did witness travel lately to Chicago, Baltimore, or these places, and witness was so excited thinks he did answer no; did not tell them was not in Washington. The witness being asked why, when the detective asked him about being in Washington, he did not tell them that he came down here, having received a telegram from his brother asking him to come, said because they wanted him to admit how he killed those three; there are four or five detectives questioning witness, he was alone and they made him so excited he does not know what he said; when they took him to the Dewey Hotel, did not give him anything to eat until Wednesday; when woke up the first day, ordered a meal and the man watching witness said, "They have no order." Finally got something to eat about noon on Wednesday, and when it was brought Grant came to the room and kept on questioning witness and did not let him

eat; did not have any breakfast Thursday morning, only luncheon and supper; after luncheon first came Grant, then Pullman, then Burlingame; Kelly did not bother witness much; did not see Kelly at the hotel; Thursday Grant told witness, "The killing has nothing to do with the check," and "T. T. Wong was threatened by some one in California," and summoned detectives, and Grant told witness the fingerprints on the front door and on the lamp and on the pistol were neither witness's nor Wan's, because they were unusually large, like a negro's hand, while witness's and Wan's hands are small; Grant asked witness if Wan ever sent him to the bank, and witness said, "Yes, yes; he took an envelope and sent me to the bank"; but witness said, "I was fooled, because this check was not signed," and witness gave them the \$30.00 check; was talking about the visit to the bank in New York; Burlingame was not present at any time that day; did not tell Inspector Grant went to Riggs Bank and presented check and his brother waited outside; told Grant was in the bank and T. P. Wong gave witness a check; at that time did not put on the initials "T. P."

Wan's jewelry was worth \$1,600; had two pearl necktie pins, mounted like a lady's diamond ring; had a half dozen other pins. When Burlingame came over to the jail after they were in the Red Cross room, Burlingame told Wan to look through his satchel and see how many necktie pins he had; there were so many Grant took one and Burlingame took three, and Wan tried to give witness one, and Burlingame said prisoners were not allowed to use a necktie pin. The rings were all gold; in witness' trunk there is a diamond ring; all Wan's jewelry was in a little satchel. The satchel was handed to witness; he opens it, opens a jewelry case inside, and being asked if the ring shown him is what he described as the ring, answers, "The jade ring, but where are the rest of the necktie pins?" Another jewelry case being opened, the witness says the two pins in [fol. 123] it are not the pearl pins, and part of the other jewelry is in still another box shown witness.

When Inspector Pullman on Saturday night in the mission house was showing Wan samples of writing, witness does not remember the inspector showing Wan the stub book, did not show him the stub book; Kelly carried witness back to Wu's room and showed witness the stub book; does not remember whether Major Pullman showed Wan the stub book; remembers his showing him the samples and asking him about the letters; had some small slips with two lines of writing on it.

Kelly cursed witness at mission house; called them yellow rats, murderers, blood like a fish, and skunks; Burlingame cursed them more than Kelly; Major Pullman did not curse, pointed his finger at Wan's face and said, "He is as cold-blooded Chinaman as I ever saw." "Why don't you admit and let your brother go; you say you are a good Christian and love your brother, why don't you admit?"

Grant told Wan in witness' presence it is case of self-defense, nobody was to blame, said that many times, said it to witness in the Dewey Hotel and said, "Just answer yes and we will all go and get something warm to eat and then we will go to bed," said to Wan,

"They were three and you were one and surely you could not kill them three because you are in a weak condition and the pistol is Wu's; surely they tried to strike you and then you grabbed the pistol from Wu and shot them three; everybody will believe that." Another suggestion was that Wu killed the other two and Wan killed Wu because he killed the other two, or Wu, after killing the other two tried to kill Wan, then Wan grabbed the pistol and shot him; Grant also said people believe that because this pistol belongs not to Wan, it belongs to Wu; he tried to sicken Wan first.

When Wan went out of the hotel Wednesday night, he said he was going to see his friend, did not mention his name; when he came back about eight o'clock, he lay on the bed, said his stomach pained him; witness did not ask him whether he saw his friend and he did not say where he had been and witness did not ask him; witness asked him first before he went to the movies and he said he could go. Witness arrived at the Harris Hotel early Wednesday morning; did not register because wanted to go up and see Wan, and did not know whether Wan wanted witness to go back right away or not; witness had nothing with him and Wan wanted him to go right out again to buy the syringe; Thursday they took the 11.10 train to New York, and told the men that asked witness to go to the bank, "I am hurrying to go back to New York," and when witness came back to the station, Wan complained for missing one train; when joined Wan at the station, went over to the hotel and came back and took the 11.10 train.

On Thursday, when got back to New York, met K. S. Wang over at Hartley Hall and told Wang was sorry could not meet him but Wan was sick; "went over to Hartley Hall to hunt up K. S. Wang."

When witness went to the bank and they asked for his identification; told them to "telephone his house," because that was what T. P. Wong told witness to say; witness does not know whether he came from Chicago and stopped at this city and was going to leave to see his uncle.

[fol. 124] On redirect examination the witness says he gave the bank people the envelope, and does not know whether there was any telephone number contained in the envelope or not.

At 409 15th Street when the bank people came in Pullman told them not to question witness, and they stand against the wall; there were five people there, and Pullman asked witness questions about his personal affairs, and Grant went out a few minutes and came in, pulls up a chair, sat facing witness, and started asking him if he was one of the gang in Chinatown, and insisted witness lived in Chinatown; witness said he did not, and went there only once, and Grant said witness must belong to one of them.

Witness took the little bag to the bank because did not want to leave it in the hotel containing the jewels.

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Thereupon, WILLIAM B. GARRETT, a witness on behalf of the defendant, being first duly sworn, testified that in February, 1919,

he was a guard at the District jail; knew the defendant and saw him at the jail in February, 1919. Witness was present on one occasion when Mr. Burlingame and another man came out there and saw the defendant after the defendant came down from the Red Cross room. Mr. Burlingame went into defendant's cell; defendant was sitting up in his bunk, writing on a paper. Defendant was sick at that time, and had been sick ever since he had been there; had been on light diet ever since he was there.

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Thereupon, Z. S. WAN, being first duly sworn, testified in his own behalf that he is twenty-five years old; came from Shanghai, China, to this country in 1916 landed in Vancouver and went directly to Ohio, where his brother Van was at school; then went to Columbus, Ohio to attend school. When witness left China his father had been dead twenty years, and left lots of property. "We have our own houses" and lots of money at the bank there; arrangements were made for mother to support witness and his brother in America, sometimes witness' expenses being paid through Dr. T. T. Wong and sometimes money was sent direct to witness. Knew Dr. T. T. Wong since a young boy in China, and came to America on the same steamer with him, and witness' mother asked Dr. Wong to take care of him. In the summer of 1918 witness attended summer school at Columbia University, New York, but did not during the winter on account of illness. About July, 1918, thinks received \$2,000 from home; deposited it in the bank, and brother suggested start some business; therefore, they bought the theatre in Brooklyn, New York; paid not more than \$1,000; at that time witness got the "flu," and the Red Cross drive was on and witness and brother wanted to sell the place, and not being a regular business man, left the place and closed it up three or four weeks later; when closed it up never owed any money; and after that mother sent \$500 in care of Washington mission, and after that, in 1918, thinks received another \$500. Witness saw Dr. T. T. Wong at the Hotel Marseilles in New York in December, 1918; did not talk anything important with him; just talked like is witness' relative.

Witness came to Washington, he thinks, January 22, 1919, because was sick at the time and feel homesick, and in New York the landlady complained about witness drinking a little bit whiskey for his stomach, and witness did not agree much with his brother, and Wu told witness, "You are not attending the school and you can spend [fol. 125] your time in Washington just the same as in New York," so witness came over and went to the mission house, and saw Dr. Wong and Mr. Wu and Mr. Hsie; at that time witness had some real jewels, some necktie pins and some rings, some sent by witness' mother and some given him by relatives; had a ruby, a pearl, and a jade necktie pin. Witness stayed at the mission house about five days, thinks, from 22d to 27th of January, occupied second floor back room; Wu moved downstairs to the second room on that floor

and stayed with witness during the night; at that time they had no servants around the mission, and witness was sick and did not feel like to bother Dr. Wong or Mr. Wu or Mr. Hsie, so asked them to let him stay in a hotel just the same as the mission, and witness left for Harris Hotel and went there; went there because intended to go to New York, and took a street car from the mission to the Union Station; did not feel good at all, so Wu told witness, "The best way for you, don't take a long trip to New York; maybe you are getting worse; get a hotel and stay a couple of days, then you will feel better and can go back to New York." Wu said this to witness at the station; registered at the hotel from Shanghai, China his home town. Witness had a little trouble about his mail sometimes, so carried it all through the mission, and usually packages came through the mission. Arrived at the Harris Hotel on the 27th, about noon, and lie down on bed and rest, was feeling so tired; was very quiet in the room and witness felt lonesome and thought of his brother. When came to Washington from New York, witness had more than \$300; about \$125 cash in his pocket and \$80 or \$90 war-saving stamps, and a little money in the bank. Had loaned S. C. Hung over \$125 about two weeks before was arrested, and had loaned to Julius Freedman, and little amounts to some students. At the mission house they did not want witness to pay; sometimes felt would like to eat something and buy something himself, but did not make any payments there on this visit.

When thought of his brother at the hotel, sent him telegram, "Exhibit Miles No. 1," rang the bell, bell boy came, gave him some money and asked him to get a blank which he did, and witness wrote telegram and told the bell boy to send it for him. "Miles No. 2" is second telegram witness sent to Van, because did not hear any answer to first telegram and thought it maybe misdelivered; sent first telegram because witness was sick and wanted brother to serve him and help him; was very tired, very sick, and could not take long trip to New York; sent second telegram because thought maybe brother did not receive the first and told him to come immediately because sickness was very serious at that time; did not like stating in telegram was sick, because "everybody objects if you got the flu at that time." Van came that evening very late, thinks about midnight; witness asked him if he brought the hot-water rubber syringe; he said he did not, and went out and bought another one. Wednesday morning, the 29th, witness thinks had a little breakfast, coffee and toast, but thought would like to eat a pineapple, canned fruit; did not get any; went to the mission that evening about six o'clock; the door was open and witness went in and called Mr. Wu; got no answer, nor Dr. Wong nor Mr. Hsie, but witness went upstairs because there was a light in the second floor, but nobody was in, and witness sat down and waited and thought maybe they [fol. 126] would be back soon; went to the mission because that afternoon Mr. Wu told witness there was a package for him from home, care of the mission, and was anxious to get the package; remained at mission ten or fifteen minutes; while waiting on the second floor heard the doorbell ring and as knew there is nobody in

the house, came down to open the door and saw Mr. Kang Li, who asked witness in Chinese if Mr. Wu is home, and witness said he is out; then he asked witness, "Anybody in the house?" and witness said they all went out; then he says all right, and witness told him, "I believe I will leave this place soon; I will go away soon"; left soon and went back to the Harris Hotel, arriving there about eight o'clock; stomach bothers witness again and is painful, so he lie on the bed; brother was there and soon he went out and when he came back from the show witness feel would like to take a walk, and they walked a few blocks across past the Union Station; witness felt cold—very cold that night—so returned to the hotel; does not remember what time it was; thinks saw the bell boy and the elevator boy, and witness and brother went upstairs to the room and witness went to bed again and did not leave the room again that night, and brother did not leave witness's room.

Thursday, brother and witness went to station to find out time, about nine or a little after; witness sit on the bench and wait for Van about an hour and when he returned, witness complained, asked him did he find the time, and witness and brother went back to the hotel and it is about time to go to New York, so witness thinks he paid the hotel rent, brother packed witness' grip and went to the station; did not pay clerk for Van; when went back to station, thinks telephoned the mission house and then left for New York, about ten or eleven o'clock, and when arrived therein afternoon, went to place where was rooming, 313 West 112th Street; went to bed; Van went out and bought witness something to make some soup, and then Van went out and witness was sleeping on the bed; witness did not go out at all; on Friday saw the landlady and K. S. Wang in witness' room in the morning, does not remember what time. Witness did not go out on Friday; sent Van to cash a few checks, Mr. Wu's check for \$30.00, the amount Mr. Wu paid witness in settlement for some ginseng witness' mother sent him; that is a sort of Chinese tonic which witness received when was staying at the mission; also had \$50.00 check from Mr. Wu, which is the amount witness loaned to S. C. Hung, who witness thinks is living 307 87th Street, New York; knew Mr. Hung in China and met him afterwards in America. About that \$50.00 check of Mr. Wu, witness says, "One of my friends who is in need of money at that time, awaiting a remittance from his home, say he has not got any money, so he asked me to borrow some money from some of my friends, and I asked Mr. Wu, and I did not mention about this amount of money to Mr. Hung, and I borrowed this money from him, \$50.00 from Mr. Wu, and loaned it to Mr. S. C. Hung." Thinks got the \$50.00 in January.

On Saturday morning, witness was in bed, reading the New York newspapers, intending to read about the peace conference, but saw the headlines about the mission happening, and intended to send a telegram to the Chinese Legation at that time. Witness being shown a paper with the words "shocked to read the death," says [fol. 127] that is the draft of the telegram he intended to send; and while was reading about it, heard a knock at the door; Van opened



the door, and two or three detectives came in, and witness asked them what they wanted; thinks they were Burlingame and Kelly and a New York detective; they hold a revolver in their hands, and first they jump on Van and search him, and Van was so excited, and witness lying on the bed could not do a thing, and told them, "Anything you want to do, do you want to find out something, tell us, they we can answer you," and they say, "we are detectives from Washington and we came here to find out the murderer," and witness said, "If you doubt then you can search everything in this house, it is no use to handle a man so rough"; while Kelly searched Van, believes Burlingame searched witness; told them was in Washington but maybe did not recall the dates suddenly. Kang Li came in and said good morning and shook hands with witness; he introduced him to his brother, and Kang Li said something about saw witness in the mission, and witness says "I did, I saw you several times," and Kang Li mentioned particularly that evening, witness thinks January 29th, about seven o'clock, and witness said, "I think about that, Mr. Li," and he said both are suspected and both in the mission where some people were killed later on; said suppose they were the last men in the mission and witness said therefore was trying to help the detectives to find out about this case. At the same time, Van told Mr. Li to take care of witness because he was sick, and asked Burlingame or Kelly if he need accompany witness to Washington, and they said do not have to. Witness believed he had cash in his pocket, but did not remember which pocket, and was looking for something when detectives asked what he wanted and witness said to get some money because accompany them to Washington, and they asked if he wanted to pay the car fare, and when witness said yes, they said the Government will pay all expenses; later witness got some money and handed it to Van, thinks about \$90.00 cash and Wu's \$30 check, and witness took \$5.00 or \$6.00 in his own pocket. They all went to the police station; they telephoned to some detectives in Washington, witness believes, and after waiting so long went to Pennsylvania Station; they asked witness if hungry, told them did not feel hungry, they said they wanted to eat and they did, and then left New York and coming down on train, witness asked how this happened, asked a few questions, because they asked witness to help find out this case; Kang Li talked to witness about Dr. Wong and frequently mentioned those three at the mission; thinks wrote his name and address for Kang Li; when got to Washington led witness to place at the station where a lot of detectives were: thinks this was Saturday, February 1st; then went to place called health department on 15th Street; Major Pullman was waiting outside the house, and Mr. Grant there; Grant took a chair, sitting in front of witness and questioned him; the first thing he asked, he accused witness of the murder, said he was the murderer, and witness was so agitated by this way he asked witness did not know what to say, and then they started and several detectives questioned him at same time and made witness very nervous; thinks Grant used his forefinger and pointed at witness and said, "You tried to cash a \$5,000 check and tried to go back to China and even San Francisco

[fol. 128] is your home." Told him home is in Shanghai and did not believe those killings; told him reason came to Washington, intended to go back home and apply for passport, and mentioned that to Dr. Wong and because by coming to Washington change may be better for witness sickness get better; witness very angry at first time and very tired too, and they begin to curse witness and he said, "Please find out yourselves." They did mention some bank that night; said witness went to bank to cash a check and witness said he did not, and if he did it is not hard to call the bankmen to come and identify him, and told them it was not nice to spend lots of time arguing that way, because did not like it when they begin to curse witness. An hour later, several men came to see witness, but witness did not recognise them; thinks maybe Pullman called them one by one to the room and wanted witness to stand up and turn around, take off his glasses and talk to them, and witness did what he ordered, and one of the gentlemen attempted to say something, but one of the detectives stopped him. Witness tried to answer the questions as fully as possible, but they were not satisfied, and he was very tired and ill and felt very thirsty and asked for some water, and some one brought some; asked the police to let him go back to New York that night, "If you think I am not the guilty man, let me go back to New York"; asked that frequently; they wanted to send witness to hospital, but witness objected and Grant said let him stay in the hotel; witness did not eat anything at all that day, because was very sick and very sorry for the death of Dr. Wong and Mr. Wu. Got to the hotel about midnight and Kelly searched witness again, and put another man to watch him. At 409 15th Street, they took some letters from witness' pocket; the \$30.00 Wu checks witness left with his brother, who later gave it to Grant. Witness thinks three men were in the room with witness at the Dewey Hotel.

Thereupon defendant testified as follows: "Sunday, this morning I did not eat anything until Major Pullman came that afternoon, and he brought me some fruit, and he says, 'How you feel?' I says, 'I do not feel good.' He says, 'Did you eat yet?' And I said, 'I do not eat anything at all.' And he said, 'Why don't you order? because at that time he had not given his order yet, and So I have not eat anything.' Major Pullman and Grant questioned witness that Sunday; wanted him to give them some suggestions about the murder, and witness gave a few suggestions according to his own judgment, and as a result of the conversation Major Pullman said he was the murderer, said witness hired a man and gave him some money to kill the three men; witness said he had no reason to kill either of them; Major Pullman asked witness if he was a Christian and believed in God; wanted him to confess at the time, and witness told him he did believe in God and complained to Major Pullman about swearing to witness; should not do so if Christians; thinks Burlingame gave him a Bible. This interview lasted one or two hours. The witness being asked what took place on the next day, Monday, says: "They always came in and asked me, but I do not remember exactly when they came in, either morning or afternoon or evening." They frequently said witness did it, and profanity was

used towards witness sometimes, especially by Burlingame, different names, just as witness' brother said. Witness was feeling very, [fol. 129] very bad, and did not feel would like to bother with those things, liked to keep quiet and could not remember the things; they came and asked him over and over again, and witness tried to answer them, and yet they were not satisfied, and the result is they said witness is the murderer. At that time was allowed to order something to eat, but had stomach trouble and could not eat much, and the waiter took the food away; the guard ate with witness; they changed three times a day, and they always watched him. Sometimes witness would try to sit straight a little and try to eat something, but soon felt tired and went to bed to sleep.

On one occasion at the Dewey Hotel Inspector Grant said to witness: "Wan, never mind about the murder case; we will leave the murder case alone; we are expecting to find out something about the check. And witness said: "Mr. Grant, after what you said, who is the man who went to the bank; who is the murderer?" This was three or four days after witness went to the Dewey, and previous to that the police had not only questioned witness but gave his suggestions, mostly suggestions by Grant; witness asked them how they thought Chinese killed Chinamen, and they said because they have pillows and some overcoat cover the dead body, and witness frequently asked something and they gave him lots of suggestions; just take, for instance, Wu had some connections somewhere, and I do not know anything, even I myself, and they tell me this and I not know a thing what he did; Grant told witness when Dr. Wong was in San Francisco some one tried to kill him, and later on he said: "Do you think any gangs or any tongs of the Chinamen killed them?" Witness asked when he was in San Francisco, not knowing when he went there; the detective said: "We will bring you to the mission house and show you everything clear and at the same time you can meet your brother"; witness asked where his brother was, and they said they would take care of him, and witness said: "You know the men, three men killed in the mission; do you want me to go to the mission house? I do not believe I like to do that." And they told witness: "You will have to go if you want to meet your brother"; witness did not know where brother was; frequently asked the three men who watched witness, and they said did not know. Being asked again in regard to the conversation with Grant on Thursday or Friday about going to the bank, says they made him believe the man that cashed the check was the man that killed the members of the mission; they say just a few hours later, or something, the man went to the bank, cashed a check. At 409 15th Street, on the night of witness' arrival in Washington, witness told the detectives he left Washington at 8.15; a time-table was shown him; witness and Wu had made a trip to Baltimore. Does not know if Kang Li returned a key to Dr. Wong; was not present when he did so. On the day witness waited in the station and his brother went away and came back, that is the day they left Washington for New York, witness was not at any time in a taxicab outside the Riggs Bank. At the Dewey Hotel Grant suggested to witness at first that

three or four fellows killed them; most of the time at the Dewey Hotel when they were questioning him witness was in bed. At first did not want to bother Major Pullman for a doctor, but later on asked them to send a doctor to witness, which was done about three or four times. On Saturday witness left the Dewey Hotel and went [fol. 130] to the mission house about five or six o'clock; at first was waiting in the parlor a long time and believes detectives went inside and fixed something, and later on they said: "Wan, come in." Then witness stood up and went in and saw Burlingame standing at what is called up-steps, very tall or high, seems to witness, and believe Kelly got something in his hand, and Major Pullman and Grant stood there, and they are standing there, and when witness entered and looked at them they all looked at him, and first thing they said is, Grant says: "When you came in you directly looked at this place where Dr. Wong's body lie." And witness said he did not. "I simply looked at Burlingame because he stood so high." And they said: "Never mind about the argument." and explained to witness this place, and they said witness did it, and he said he did not; then went to the kitchen in basement, and they showed the place where Mr. Wu and Mr. Hsie were killed, and on the way upstairs showed some bloodstains on the steps, and Mr. Grant said: "That is the place maybe some one shot Dr. Wong and Dr. Wong ran upstairs"; there is a light in the kitchen, but it is dark; in the kitchen they show the bloodstains at what is called the drawer, and one chair was turned upside down, and they told witness the gaslight was burning very high, and Dr. Wong's eyeglasses dropped on the steps; showed witness bullet hole through the wall, and Grant and Burlingame did most of the questioning; asked if anything was said in the questioning about the heads of two of the bodies being covered, witness answered: "Yes; they not only tell me this whole situation but they also show me the pictures where Hsie's and Wu's bodies lie; they show the bloody handkerchief"; Grant said witness certainly did it, and witness told Grant, "I stand right in this place; I am innocent"; they repeated that witness did it, but refused to say so. Witness don't argue with them, was so sick can not stand straight; asked where his brother was, and some one said: "He will come soon"; seems was down in the kitchen a long time; no profanity used down there, then went to the first floor, and they showed witness some lamp shades with fingerprints on them; witness said: "If you want to take my fingerprints I am glad to give you." Grant said: "We will find out; we will find out and we will proceed," and they said they had fingerprints on the revolver, and witness said he did not do it; nothing said about fingerprints in other place; does not believe the kitchen was heated, because witness felt so cold. When they showed witness the pictures they told him how the body lie and explain clearly and give suggestions at the same time about the killing, most by Grant.

On the second floor witness met his brother, and did not feel like to see his brother, because Major Pullman frequently said witness was a bad man and brother did not even like him; complained to Major Pullman about it; when we met there, just shook hands and

witness sat down and Van asked witness how he felt; witness said don't feel well at all; was not allowed to speak Chinese and have to speak short English sentences; thinks Major Pullman and some detectives were there; Major Pullman showed witness Doctor Wong's picture on the wall and wants us to confess, and witness said: "Have nothing to say; do not know this murder case." In the room witness occupied when at the mission house, told the detectives there were two beds, one Mr. Wu moved down while witness was staying at the [fol. 131] mission. Witness had two trunks left in the mission, and have a phonograph and record, a tennis racquet, balls, and letter from Mr. Wu; left them there for Mr. Wu.

When we came up from kitchen to the first floor, Grant showed the desk, and there is a Chinese knife on the desk, and Grant asked witness what kind of thing it is and witness said, "That is a kind of Chinese kitchen knife," and Grant said the chair upset and some sign shows they had a struggle or fight in the house. Down in the kitchen Grant said maybe some one hid in the dark place and when Doctor Wong came down the step shot him. On the third floor Major Pullman asked some questions and said, "Suppose you be an expert on handwriting and can tell us writings; tell me who wrote this or these;" there was present Kelly, Burlingame, Major Pullman, Inspector Grant, and witness' brother, Van; does not believe brother was in the room on the third floor when Major Pullman said this; showed witness several photographic copies of his own handwriting, the register book, some checks or endorsements on a check, witness believes, and a small one they claim I give Mr. Kang Li; Major Pullman then asked, "Is this your handwriting?" showing one by one, and witness said, "Yes; every one," and last he showed witness the stub and asked if it was his handwriting, and he said, "No;" and Pullman says, "I know you will say no; I want you to compare again," and returned all the photographic copies and put all on the big check stub and compared them; Major Pullman reminded witness of his space and the space on the check stub; witness told him space in his handwriting is different from that writing; he measured it, using one of the slips he had given, and Major Pullman said, "Leave the space; never mind about the space; compare the 'w's,'" said the "w" is vertical, and witness said, "Although it is vertical, but it is a little twist to the right," on the stub—"but my writing 'w' is towards the left." Then Major Pullman said, "All right; let's compare the 'g's,' then;" Major Pullman said this "g," the end of this "g" is a little curved line or straight, rather than curved line; it looks like your writing, referring to the "g" on the stub, and witness' "g," saying it looked like witness' "g," and witness looked a long time and told him end of the "g" looks like his writing; "it looks like my writing," and then Major Pullman said, "Can you be sure of it or not?" and witness said, "I can; sure; it looks like it;" and that is all Major Pullman asked witness about it; and witness being asked if it is his handwriting on the check stub answered, "No; I just mean the end of the 'g;' a little bit, not the whole thing;" it is not his handwriting on the stub. Shortly after that Major Pullman left and Inspectors Grant,

Burlingame, and Kelly questioned witness and his brother and used profanity, very freely—cursed them whenever they felt like it—and at the same time wanted witness to tell something about this murder;" said, "Just say yes; say you killed them," and witness kept quiet. A pistol put in a yellow creamlike envelope was shown witness, taken out of the envelope by Kelly; it was handed to witness and they wanted him to fire it, and at the same time Major Pullman said, "We get a fingerprint on this revolver, and bloodstain on it;" witness said he never touched this revolver, and never knew where Mr. Wu kept it, and never saw it when he was in the mission house; Major Pullman wanted witness to pull the trigger and he did [fol. 132] so. Asked what time the major left, says does not know about time, "seems a long time to stay in the mission house;" when Grant was sleeping Burlingame took the coat hanger in his hand; wanted witness to say something and witness asked for some water, and Burlingame was getting mad and tired to hit witness with this coat hanger; Burlingame pushed him down, "and I was so weak at that time I tried to sit in the chair, but I missed this chair, so fell on floor;" Inspector Grant was awakened and began to question witness about this murder and witness frequently asked them to be let alone, but they say, "Unless you tell us and we will leave you alone, we have not enough time to sleep since you came over; if you say yes, we both can lie down and sleep," Grant said this. When Major Pullman was there and brother left the room to go to the toilet and came back, one of the detectives said brother told him witness killed the three, and brother was excited again. They never gave witness any rest that night; Grant that night suggested that it may be self-defense; he says, "You know you have a very good, self-defense case," but before that he asked witness, "If you are a law student at Columbia," and witness said he was not, and then Grant says, "I know you are sick and it is impossible for you to kill three, and maybe one killed two and you killed the one; that may be possible, and moreover, I know you did it, and you just say yes, and then we can both, we detective and you, both can rest; you know your brother is innocent and he is very young, and why put him in trouble? And if you just tell us then we will let you both out," and at the same time he read some statement from K. S. Wang; then witness was sitting there and of course at first objected to telling him anything; witness could not stand to be questioned, and Grant says, "You just say yes," and witness did say "yes." When Grant suggested self-defense, said witness was sick at the time, very seriously and had no reason to kill the three, and you know that both men are good friends and it may be possible for witness to kill one and one kill the two, "because the one that I killed they find him in his bed." Witness made no statement to him about killing Wu; when he said "yes" could not even stand straight and said it "because it lasted so many hours, 'and we must get some rest, you know, since you been in Washington, how many days, let's count, and this is our last day, if you don't tell we will give you something worse than that:' that is the only thing I hear." Then they want to tell some stories about the killing; and believes one of the detec-



tives said could start questioning witness to-morrow, and after that they took witness to the police station, don't remember what time; witness was very quiet and very sick at the stomach and had headache, "and my eyes feel so dry and I have no tears at all, could not cry." At the station they searched Van again and locked him in his cell, then locked witness in the cell and searched him and then put him in the witness room; that night could not sleep because they want witness to tell; next morning was tired, and "I think something to try to tell them because they give me this kind of torture and I can not stand it." On the Sunday night they asked witness again about the murder and he tried to remember something, "but yet I can not figure out how to tell them something that is not right;" and the next morning they brought him to the mission house and [fol. 133] want him to tell them story. Sunday night at No. 10 station house witness met K. S. Wang. Thereupon the following ensued:

The witness said, "and K. S. Wang told me——"

Mr. Laskey: I object.

Mr. O'Shea: If the court please, we believe it is part of the circumstances surrounding the making of the confession, and we believe that if K. S. Wang made certain inducements or suggestions to this man, as the result of which this man made a statement, that that is proper.

The Court: There is nothing to show that K. S. Wang had any authority to make any representations or take any part in the case.

Mr. O'Shea: That may be true; but if it should appear that he was used by the police for that purpose——

The Court: It does not appear yet.

Mr. O'Shea: Detective Grant said, if I recollect the testimony correctly, that he did get K. S. Wang to talk to this boy.

The Court: He said Wang talked to this defendant, but that he got him to act for the police—there is no such testimony as that.

Mr. O'Shea: I think he sent him in.

The Court: It may be he went so far as to say he sent him in; I do not recall the exact language, the exact testimony, but there is nothing from which you can reason he had any authority to represent the Government in this case.

Mr. O'Shea: Very well; we make the offer to go into this conversation, and with the court's refusal to permit us to do so we take an exception.

Which exception was duly allowed.

Monday morning Inspector Grant and Burlingame took witness to the mission house, and wanted witness to tell the whole story. Witness told them they had better question him; he could not tell the whole story, because did not know so well about this case; "besides all the suggestions they give me, but I could not put on the whole story." Then Burlingame questioned witness, and he tried to apply those sayings that were told him, and wanted to satisfy them, just kind of picture sometimes of when witness was a guest in

the mission house, and tried to make them believe; the police suggest for witness, and he has no reason to kill Dr. Wong and Mr. Hsie, "and they mention something about Mr. Wu, and they suggest to me it is all right." Witness did not kill Wu nor Dr. Wong nor Mr. Hsie. After leaving the mission that Monday, thinks they brought him back to the station; took picture again of fingerprints, and Inspector Grant said Chinese people the first to use fingerprints; witness said he did not know. Thereupon the following occurred:

"Q. Did there come a time when you went to jail?

"A. Only Grant and Burlingame.

"Q. I say, did there come a time when you went to the jail?

"A. Some time.

"Q. When was it you went to the jail?

"A. They came frequently.

"Q. No, no. I said did there come a time when you went to the jail after having been in the station house?

"A. I don't understand you.

[fol. 134] "Q. After leaving the station house and going to the morgue, where did you go then?

"A. They sent me to jail."

Felt ever so sorry first time saw the jail; went to bed. Burlingame came to the jail, cell No. 6, and wanted witness to sign the confession; witness did not read it; thinks Mr. Laws, the stenographer, read it to witness and he signed it, because "if I don't sign it I think they might review the case again and question me again." That confession is not true. Witness did not eat anything at all, and sickness became so serious they called another doctor and removed him to the Red Cross room, where he remained, thinks, about a month, sleeping on bed all the time. During the course of witness' talks with either Grant or Burlingame one of them mentioned something about a garter; they wanted witness to show them his garter, which he did.

Asked whether his brother was in the cell when witness signed the statement, the witness says his brother wanted him to read it before signing, and "some one told my brother, 'leave the cell' and let them two talk to me."

Thereupon, on cross-examination, the witness said went to the Dewey Hotel Saturday night; had nothing to eat Sunday morning, did not feel hungry; did not eat that day; when Major Pullman came in the afternoon, he had not yet left orders to the hotel for witness to order anything; after that, ordered what he wanted; witness says that he signed certain checks for food shown to him by the district attorney, dated February 2nd, 1919; witness says he did not eat on Sunday, was feeling sick, "maybe some one eat this," referring to the food mentioned on the checks. When the officers first came to witness' room in New York, did not tell them left Washington January 27th, told them the 29th or 30th. When Kang Li came in, witness said he was at the mission house that night about seven o'clock; he did not say he left Washington that night; did not hear the

officers ask Van whether he had been to Washington, because Burlingame searched and talked to witness; thinks Van did mention something about Ohio, not Baltimore, thinks he said he came from Ohio. When they told witness never mind about the money, witness was searching for his own money at the time. Witness did mention something about sickness, but did not tell them he could not go; Kang Li did say if witness was sick he would take care of him; Kang Li was requested to take care of witness by Van; witness had been reading about the whole thing in the paper and was so agitated, and tried to telegram at the same time, and wanted Van to get a sheet tablet and pencil; was writing a telegram not to Kang Li but to send to legation; did not know Kang Li's address. When witness left the mission house on January 27th, told them good-bye and that he was going back to New York; took a street car and Wu went with witness, taking the suit case and Mr. Wu saw witness' condition, and suggested he stay at this hotel, saw witness was very sick and could not take a long trip; he asked witness if wanted to go to the hotel; witness said he thought he would and went to the hotel; Wu went with witness, but does not think Wu went upstairs; thinks he handed the bag to one of the colored bell boys; Wu had suggested this because of witness' physical condition; witness registered "Z. S. Wan, Su Chan, Shanghai," that is his home town; does not remember the room number, thinks it was 431, thinks there is no mistake about the room, but does not remember; went to Harris Hotel about 11 or 12 o'clock, took off his clothes and rested; thinks wrote the first telegram a few hours after reaching hotel, if telegram shows sent at 12.06, maybe witness arrived at hotel before ten; does not remember times. At first he did not think needed his brother; thought the hotel service better than the mission; saw Mr. Wu again that day, Monday, the 27th, at the mission; does not remember the time, that afternoon or evening; saw Dr. Wong and Mr. Hsie and Mr. Wu, and they say, "How you feel," Mr. Wu said, "You were very ill at the Harris Hotel." Witness stayed at the mission about a half hour; either Mr. Hsie or Dr. Wong said heard witness was sick at the Harris Hotel; when left, thinks Mr. Wu accompanied witness down town some place; said he wanted to see some friend and got off the street car; witness is not sure of the time; between five and six o'clock; does not know what time. Witness did tell the police down on 15th Street that had supper with Wu, which is true; had supper with him several places, but not on the 29th; police were asking about all witness' dealings with Wu; does not believe told them had supper with him on the 29th; did tell Major Pullman Wu went to the station with witness and they had some fruit together, but not on the 29th; did tell them had left on 8.15 train; one or two days before the 29th, witness went to Baltimore at 8.15 with Mr. Wu, to get something to drink, and when told police left Washington 8.15, referred to this trip with Mr. Wu; when witness was visiting the mission house, had supper with Mr. Wu at several places. Being asked why he told the police that he ate supper with Wu, January 29th, witness said, "I told the police something—maybe I did say that

because I got mixed up with the dates, and I never expected to have such a trouble, I never expected to recollect those things." In New York, when the police first came, witness did not tell them first left Washington on the 27th of January, and then, when Kang Li came in, said the 29th; tried his best to tell them, could not tell them clearly "what I expected;" they held a revolver, asked questions different from the district attorney; does not remember witness' brother, in New York City Saturday morning, tell the officers that witness arrived in New York late on the night of the 29th; "he said something, he was excited and I tried to cool him down." At that time witness did not remember the date he left Washington, never expected to be asked questions about it, had to figure out the date; "at that time I did mention, I think, maybe the 29th or 30th, I do not remember, I did tell Burlingame" and he asked witness if he saw Kang Li in the mission house and witness said he did; told them he left Washington either the 29th or 30th, and at the same time told Burlingame did not remember the date exactly; left everything to his brother. On Monday evening, the day witness left the mission house in Washington, went back to the mission house for a little while and left with Mr. Wu; then returned to the Harris Hotel and rested, and a few hours later took a walk for about half an hour, came back and went to bed; did not go out the next morning because not feeling good, thinks later that evening took a walk; did not go back to New York because could not take a long trip, "maybe I was very, very tired, but suddenly I feel a little better and then I went out and took a walk;" does not remember whether went to mission house on Tuesday, thinks he did around noon for ten or fifteen minutes and saw Mr. Wu and Dr. Wong; went to see about his package or any mail or whatever was there. On Wednesday, January 29th, witness got up about 5.30 in the afternoon and went to the mission, because that afternoon Wu came to the hotel and told witness the latter had a package from home, and told witness to come to the mission house, he wanted to talk to him, and told him he could get the package at any time; about 7 o'clock witness feel a little better and dressed and went to the mission. Did not send his brother because he had never been there, "and I had to introduce him and then he can go over there;" found no one at the mission house, took off his overcoat and hat and muffler and hung them on the rack—a felt hat; the only room lighted was the second floor front room, so went up there and waited ten or fifteen minutes; when first opened the door, called Mr. Wu and Dr. Wong and Mr. Hsie, and then went up to see if could get his package, but no light in the other rooms and sat down and waited for a while, ten or fifteen minutes, and then went back to the Harris Hotel; if it is seven o'clock when Mr. Li came to the mission house, witness must have left ten or fifteen minutes after seven; reached hotel about eight o'clock and brother then undressed witness and put him to bed; asked Van if he wanted to go to a show and he said "all right," and witness said did not need his help and he could go to a movie show or whatever he liked; did not see Mr. Wu at all that night; when Van came back wit-

ness thought it was not very late and got up and dressed and went out with Van to take a walk; does not know what time, thinks came back about 12 o'clock; being asked why he got up at 11 o'clock at night and went out with his brother, says, "You see, that is—a man when he is sick and everything upset, in the daytime I feel tired and do not feel to take a walk with so many people when my face looks so pale, and sometimes suddenly get sick and I do not feel I like to take a walk, and that evening might enjoy some air, to get fresh air, I do not enjoy being in a room all the time." Being asked if he were not in the mission house about 8.30 Wednesday night, answers, "Wednesday? I do not believe I did, Mr. Laskey, because Kang Li say it is seven o'clock, so I think it is seven o'clock." Does not believe it was Mr. Wu's custom when he came in at night to go down and look at the furnace; sometimes Dr. Wong looked at the furnace and sometimes Mr. Hsie and sometimes Wu; remembers once Mr. Wu put coal on the furnace and Dr. Wong put some more and makes it so warm at night. It is not true that about 8.30 Wednesday night witness was in the mission house in the basement and Wu came in, went upstairs and changed his clothes and came down to look at the furnace and witness shot him, and later Mr. Hsie came in and came down looking for Mr. Wu, and when he entered the kitchen witness fired at him and he ran towards the furnace room and witness shot him, the witness saying, "No; that is the suggestion the detectives gives me." It is not true that after that Dr. Yong came in and came down the steps and saw witness and said, "Wan, you here again?" Dr. Wong did say, "Wan, you come back?" on one occasion, but it was when I was visiting the mission after I left Harris Hotel some [fol. 137] time; did not say that Wednesday night; witness being asked if he did not then fire at him, answers, "I have no reason at all to fire at Dr Wong and Mr. Hsie and Mr. Wu; it is not true, or that Dr Wong broke his glasses, dropped his handkerchief in trying to go up the steps and witness struggled with him and shot him, and after that left the mission house and became bewildered; did tell Mr. Burlingame that, but it is not true. Thereupon, the district attorney said:

"Q. Oh, it is not true?"

Thereupon counsel for defendant objected to the form of this question as commenting on the evidence and as being highly improper; the district attorney stated that the words were in the interrogative form; which objection the court overruled, and allowed the defendant an exception to its action. Being asked "Did you tell Burlingame that 'when I saw Dr. Wong's body lying that way I cried a little'," witness stated he did cry because did not like to see him get shot by anyone.

Q. You did cry when you saw Dr. Wong's body there before you?

"A. Yes."

The body was not there, but they showed the pictures; was not there the night he was killed; witness did tell Mr. Burlingame,

"When I walk along the street I do not know what I am going to do that time," and told him came downtown and met his brother at the theater, near the theater; thinks the Garden, but Detective Burlingame figured that out for witness and showed him the Garden Theater, and it is not very true, the only part that is true is that witness' brother went to the theater; when detective asked witness, "Where did you go then?" and witness said, "Van and me go to the hotel," it is true that after the walk with witness recollected Van and he went to the hotel; did not meet Van outside the theater and walk to the hotel; Van came to the room in the hotel and they went for a walk; mentioned the theater because, when witness told about taking the walk, Mr. Burlingame said "It may be later than that," and then "I said the theater, I asked him to tell him to meet him at the theater"; was forced to say took the check, letter, and Mr. Wu's card back to the hotel; it is not true that the next morning witness called Van to go to the bank to cash a check, or that "we got a taxicab." Burlingame asked witness to tell something about a taxicab and witness said, "We got a taxicab," but it is not true, told him that because they told witness a taxicab waited outside the Riggs Bank and a man went inside and then told them witness was the man who waited outside, but it was not true, told them that "because if you don't say that then the whole story you have to review again"; never saw Mr. Halley, the taxicab man, until he was on the stand and never took a taxicab with Van except maybe in New York; said what was in the confession about waiting outside the bank and Van coming out and saying the check was not good, etc., because those men I know everything and they told me when I confess and then they told me something before and then they asked me questions"; it is information from the police and it is not true; witness has never been at the Riggs National Bank or waited outside or hired a taxicab; was waiting at the bench in Union Station. Burlingame told witness [fol. 138] they could not find the check, so witness told him tore up the letter and check. Witness waited for brother at the station about an hour and when he came back asked him why he was so late, told him missed one train; brother did not say anything, but told witness, "We get another train" that left at ten or eleven or something; did not ask him where he had been, but just complained about his being late.

Wu gave the witness the \$30.00 check on Sunday, January 28th at the mission house, though check is dated the 27th he wrote it on Sunday. Thinks maybe on the train coming back from New York did write his name and address for Kang Li, but seems no reason at all, for they knew witness' address, does not recall writing it, but identifies his writing shown him by the district attorney in a little book, but does not know whether he wrote in that book or not.

In his room in New York, just before came to Washington with detectives, left \$90.00 under his pillow, and his brother later told him he got it, and detectives also got the \$30.00 Wu check from witness' brother, out of the pocketbook; knows this because they told witness so.



Saturday evening, at the Dewey Hotel, witness called long distance to get his brother "because they put me at the hotel and I want to go back and I want either my brother over or go back to New York, and they don't allow me——" and after that Major Pullman ordered witness not to be allowed to use the telephone; did not get his brother.

"Q. It was Friday at the Dewey Hotel that you told Inspector Grant, or rather Inspector Grant told you, that your brother, Van, had been to the mission house [bank?] and you wa-ted on the outside, you said that was a lie?

"A. Yes, I did say that; that is the information I learn from Grant.

"Q. And you would not say any more that night?

"A. They asked me every way, they make me tell, they make my face look at them and don't allow me to turn my head away.

"Q. And you would not tell them anything that night would you?

"A. I don't believe I say that."

When witness first met his brother at the mission house Saturday night, was cool towards him, but it was not because witness believed his brother had told the officers he had been to the Riggs Bank and witness waited on the outside, but "no, by coolness this: Major Pullman mentioned to me frequently saying my brother told him I am the bad fellow and drink whiskey, and I told Major Pullman I don't smoke even, because my stomach feels worse, pains me so much, and I drink a little whiskey in order to relieve my pain; I explain as clearly as possible to Major Pullman, yet Major Pullman, I don't know how they fixed doing so many things I don't like to hear you know." Those things were, they say witness bad, beat his brother and treat him cruel, was lazy and selfish and spent lots of money.

Wired his brother to come immediately because, as has already told the district attorney or Mr. O'Shea, was sick and thought it was the "flu"; did not write was sick because people object if you have the flu; thinks did have the flu at that time, so did not want to tell everybody he was sick; "another thing I want to tell you, when I [fol. 139] left from New York to Washington I feel a little better, so I came over and when I came over and we had some of our Chinese dishes and too greasy sometimes, hard to digest, my stomach became worse and worse"; ate at the Nankin Restaurant here with Dr. Wong, Mr. Hsie, and Mr. Wu; wanted his brother here to nurse witness and take care of him and the first thing his brother did was to get a hot water bag; witness could not speak loud even, or stand straight. Wu sometimes had classes and works in the mission, and near the end of the month is very busy sending out checks to the students and witness did not want to bother him; did not go back to New York on Monday because was waiting for his brother to go back with him; did not feel well enough to go back Tuesday night, sometimes when stomach did not pain "I am well but weak, because I cannot eat much"; could not tell when his stomach would pain.

When Van arrived witness took an enema and drew some hot water, witness didn't feel well and did not eat anything, and Van gets some sandwiches and something to eat, "and we rest"; witness and brother got up late Wednesday, 1 or 2 o'clock in the afternoon, and witness ordered some coffee and feel like to eat fruit, not fresh fruit because too much acid, but canned fruit, and thinks Van sent bell boy to get some pineapple or canned fruit, and bell boy could not get it, so Van says he go and get it and went out and came back and said didn't know the streets or where to get these things, and says "What's the use to stay in the hotel?" and witness said "We will leave to-morrow anyway" and "we prepared that evening to start the next day"; when Van returned witness was lying in bed, and got up; Van had some paper and witness read some and ordered some coffee and toast; about six o'clock went up to mission house on car, without transfer, to get package; the door was closed, but "you turn the handle and it is open"; had no key. When Kang Li left, witness put on his hat, overcoat, and muffler and went directly to Harris Hotel; told Kang Li was leaving.

Thereupon, in response to questions by the court, the witness being asked if Kang Li is his friend, says, "He is not my friend yet," does not know what there is between them but Li did tell stories that are not true, said witness had a cool attitude towards him, which was not true. The court asked witness a number of questions about his going to the mission house on Wednesday evening or late afternoon, the meeting with Kang Li there, the object of his going to the house and his leaving shortly after Kang Li was there, finding no one at home, and then said:

"Q. Now, the point that comes to us is—we are trying to do justice between you and the Government; if you had all this perfect recollection of what you did, why did you make these statements, first orally and then in writing, to the detectives?

A. That is my first experience in getting in such trouble and I don't know how I expect to tell them and never know——

Q. Now, that is the psychology of the thing; you know what psychology is, don't you?

A. Yes.

Q. We have to interpret here how you could have been led by force to answer questions that would incriminate you in this tragedy. What is your explanation of it?

[fol. 140] A. My explanation is this: From January 22nd until——

Q. You mean the 29th, when you went to——

A. (interrupting): No, I mean February 1st, since the detectives arrested me, until February 9th, or 8th, I never tell them anything, I tell them always I am innocent.

Q. You did not tell them anything that was true up to the time when you were over there at the mission house, did you?

A. No.

Q. What induced you to tell them, then, what you have told them?

A. At that time I could not stand, I was so ill, and they take me in a room and question me by day and night and I think that maybe I die and whatever my brother they told me 'your brother is over there and if you tell and let your brother out, then it is easy for you.'

Q. You knew that your brother was not in the thing at all, did you not?

A. No. I don't know until the detectives told me.

Q. But I say of your own personal knowledge you knew that Van was not in this thing at all with you, did you not?

A. We were both not in it.

Q. I say you knew he was not in it, whether you were in it or not.

A. He was not in it. \* \* \*

Q. Why did you make these statements when you knew they would lead, of course, to a very severe penalty—simply because they threatened you and questioned you?

A. They told me on the last day, they had me eight days—

Q. I am not talking about—

Mr. O'Shea: He is giving his reason.

The Court: I am going to let him give his reason.

By the Court: Suppose it had been eighty days and they questioned you every one of the eighty days, and poked their fingers at you and called you a yellow rat, even then why should you put yourself in a position where you would receive the ultimate penalty of the law, when you knew they could do nothing more than harass you?

A. I know everything they told me, so I liked to tell.

Q. What is your reason, why did you do it, that is the point; why did you make that statement when you knew—and if I am not clear correct me—

A. (interrupting): I know what those men—

Q. Why did you make the statement when you knew the result of the statement would be worse than anything they could do?

A. Because I could not stand it; they keep questioning me and I could not stand it.

Q. Would you rather not be bothered than hanged?

A. I like to get rid of them that time; I don't want them to stick to me all the time. Now, even now, they come to jail and they want me to sign another confession. I can do that because I am helpless.

Q. You signed this confession voluntarily, did you not?

A. I was locked up in the cell.

[fol. 141] Q. Nobody held a gun over you?

A. Nobody.

Q. And nobody threatened to kill you?

A. This is worse than killing. If they kill me I don't mind.

Q. You don't mind being killed, but you don't like to be questioned?

A. I don't like to be disgraced.

Q. How were you disgraced by being asked questions?

A. Well, they call you different names, and you didn't do it, and

he said you did it, and wants me to look at them when they questioned me, and keep my eyes on them all the time.

Q. You were in what is perhaps the best room in the jail——

Mr. O'Shea: Not at that time; no.

Q. I mean before. You were put there for treatment, were you not?

A. After I signed the confession.

Q. Well, you were not suffering when you signed it, were you?

A. I was very, very ill.

Q. Now, you had been there for several days and had been treated well, had you not?

A. I did not eat anything at all.

Q. You had been treated well, had you not?

A. Yes.

Q. You had made these statements days before you signed the paper, had you not?

A. Yes.

Q. And they had been taken down in shorthand?

A. Yes.

Q. So far as you know, and had been copied out and read to you and signed each sheet, initialed each sheet?

A. Yes; that is what they told me to sign, they caused me to sign.

Q. What did they say would happen to you if you did not sign?

A. If they don't tell to sign, I don't sign; they tell me to sign, I sign.

Q. What did they say would happen to you if you did not sign?

A. I don't know.

Q. Did they tell you anything?

A. They didn't tell me anything.

Q. And you signed these pages and then signed the final sheet with your own name? You initialed the pages?

A. Yes.

Q. That is all true?

A. Yes; before I signed this, they wanted me to go to the office and sign this, and I could not get up, and that is the last time they called me, "Wan, get up," and I say, "Anything you want me to do?" and I could not get up.

Q. You knew what you were doing, did you not?

A. I don't know.

Q. You knew what this paper was you signed?

A. I don't believe I remember very well. I remember something.

Q. You knew that it implicated you in the killing of Wu?

A. Yes, the whole thing.

[fol. 142] Q. And you voluntarily signed that? Three or four days occurred between the time that you made the oral statement and that time?

A. Three or four days I did not sign it—eight days.

Mr. O'Shea: May it please your honor, I would suggest to the court, if I may do so, that I hardly think it is proper to use the word "voluntary" at this time. I think that is a question for the jury.

The Court: Well, of course, he may answer whether he signed it voluntarily or not. He has a right to say that he did not sign it voluntarily or that he did.

Mr. O'Shea: If your honor thinks it should be put that way, I will withdraw the objection.

The Court: Well, I am going to leave the whole thing to the jury.

By the Court:

Q. You did know what you were signing?

A. Yes.

Q. And your explanation is that you would rather sign it than go through what you were going through?

A. My idea to sign this confession—they want me to tell and wanted me to confess and to sign, and my idea is this: I want them to leave me alone and let my brother nurse me and let me get well. I don't want to argue with them at the same time.

Q. I want to get your viewpoint; and to attain that end you were willing to sign something that would probably lead to your death; is that it?

A. Lead me to death?

Q. What I mean is this: This is a first degree homicide case and you know what that means?

A. Yes.

Q. So if your confession is true you would be signing your own death warrant, perhaps?

A. No; my idea is this: I signed it, but if it is true or not they can find out.

Q. Your idea was that by signing it you did not admit it was true, but you would let them go ahead and find it out?

A. Yes.

After some further questioning by the district attorney the court directed that the reporter strike out his last question and answer to it as above given, saying, "The jury will disregard it." Thereupon the following occurred.

Mr. O'Shea: May it please the court, in view of the fact that your honor struck the questions and answers of the defendant and certain questions suggested by your honor—

The Court: The question and answer; there were only two—one question and one answer. If you want it to go back in, I will let it go.

Mr. O'Shea: I think it should stay in the record, if the court please.

The Court: All right. There is no objection. I thought perhaps I had been argumentative in the matter.

Mr. O'Shea: If your honor please, if I may be pardoned for saying so, we thought in view of your honor's unusual attitude in cross-examining the defendant—

[fol. 143] The Court: I do not know that you will be pardoned for saying it was unusual; but my attitude in cross-examining, we will let that stand.

Mr. O'Shea: We felt, in view of that fact, that the questions and answers ought to be permitted to stand in the record.

The Court: I am perfectly willing. Might I also add, Mr. O'Shea, that there was no objection made at all to the court's questions?

Mr. O'Shea: Of course there was not, until your honor of his own motion—

The Court (interposing): Of my own volition.

Mr. O'Shea (continuing): Struck out the question and answer which we thought was vitally important to go to the jury.

The Court: All right. It goes.

Mr. Laskey: You want it to go to the jury?

Mr. O'Shea: I certainly do. I want all the questions and answers of the court to go to this jury intact, the way they were asked and answered.

The Court: Without exception.

Mr. O'Shea: Yes.

The Court: That is satisfactory.

At the mission house on Saturday night, when Major Pullman was questioning witness about the handwriting on the stub and comparing some photographic copies of handwriting, witness did not tell him the handwriting on the stub was his. Witness explained what happened as follows: "He asked me shall I give you—he asked me one by one, "This is sample of my handwriting," and asked me if these were your handwritings. I answered him 'Yes.' One by one he showed them to me, and later on he showed me this stub and asked me if this is your writing. I answered him, 'No.' He says I know you would say 'no.' Then, never mind. Then we will compare it, these handwritings, and at the same time he gave me, I think, it and something more, I think, and he wants me to be a handwriting expert and tell him whether this written by one man or two man, and at the same time, when I was looking at this signature and compare with these three, he first told me about a space, something or other, and when he told me about the space I use one of the slip, and I measure it. I do not know which slip; I do not remember; but, anyway, I use it and measure, and I told him this space and that space different from my space, and finally he said, 'Never mind about the space; let us compare the "w,"' and he says, "This "w" in this stub is vertical, almost vertical," is what he told me, and he told me to compare; and then I compare for a long time; and I said, 'This "w" is vertical, but towards the right, but mine is towards the left.' Witness said the upstroke of the 'g' looked somewhat like his writing; not all of it. The district attorney here showed witness the \$5,000 check stub and asked him if he did not write it, to which the witness replied 'No.' Finally at the mission house Saturday night witness promised to tell; they said, 'Just say "yes," and then we can rest'; did not say anything that night."

Thereupon the following occurred:



"Q. You did not say anything that night, did you?  
[fol. 144] "A. No.

"Q. You did not say anything about having been in the mission house at the time anybody was killed or not, did you?

"A. No.

"Q. The next day was Monday, that you saw Inspector Grant, wasn't it?

"A. Monday? Yes; I saw him.

"Q. You did not see anybody on Sunday, did you? Wasn't it Monday that you first said——

"The Court (interposing): Sunday he was at the station house, as I remember it.

"Mr. O'Shea: Yes; at No. 10 precinct.

"Mr. Laskey: Yes; Sunday he went to the station house.

"By Mr. Laskey:

"Q. Sunday night at the station house you told Mr. Grant that you were there when the men were murdered, didn't you?

"A. Because—yes."

On Sunday night at the station house witness named Chen as the man who did the murder, because Detective Kelly brought Witness Chen's card from the latter's trunk and asked witness about it, and witness told him he did not know where he got the card; did not believe he is the man that did it; but Kelly finally asked witness and wants him to tell him something, saying he had treated witness nice, "but yet I know he did a great part" of the questioning, too, and it is not true he treated witness nice, according to his judgment, but very cruel in the hotel, kept on questioning and questioning and never would let witness see his brother, and told lies between his brother and witness all the time witness was in the hotel. Thinks Chen was one of the students in New York; does not remember the full name on the card; just had a glance at it; and when the officers suggested that that man had killed the three men witness said, "Yes"; wanted to assure them that witness did not do it; "but they do not realize what I say, and the only way let them find out, and then they know the whole thing"; they wanted witness to put Chen in it, and witness said "Yes"; and at the mission house on Monday, when Grant said "Now, Wan, you know there is no Chen in this," witness said, "Yes." On Sunday night at the station they wanted Chen in it, and witness put him in, and on Monday at the mission they told witness there was no Chen in it, so witness did not put Chen in it. On Monday morning at the mission house said that witness' friend, Wu, killed Hsie and Dr. Wong, because was forced by police, and Mr. Grant had told witness at the Dewey Hotel that Wu had bad character in Washington, which witness doubted; witness was locked in jail and did not know anything, but maybe it is true and maybe the detectives telling lies; at the same time, Dr. Wong and Mr. Hsie were killed, and witness think- maybe there was something wrong with Wu, as witness had not been in Washington. Witness did not think Mr. Wu killed Dr. Wong and Mr. Hsie; Inspector Burlingame thought so; "I did not think so,

yet I have signed this confession, though \* \* \* I was forced myself, I could not say; if he wants me to put anybody, if he wants me to put something else, I was willing to do that.  
[fol. 145] Q. "Why did you put Chen in then?"

A. They say, the detectives, 'There is no Chen in it'; if they say 'Is Chen in it,' then I say 'Chen in it,' I have to do what the detectives want me to do. \* \* \*

Q. Why, they first charged you with having killed all three of the men, didn't they?

A. Yes.

Q. Why didn't you admit that then?

A. At first he charged me three and at first he asked me the killing; at first he asked me the check and I denied that because at that time my physical condition was not so bad, and later on, gradually and gradually they had me in the hotel and they questioned me more than eight days and finally I could not stand this condition, and moreover I got more information from them (?) and I know very well about this case even if I did not do it, and they ask me the story and ask you if you knew it; surely I know it. I know the story from the detectives." It is a suggested confession. Thereupon the following occurred:

"Q. It is a suggested confession, is it?"

A. Yes.

Q. Not a compulsory one. They did not force you to sign it, but they made a suggestion and you followed it. Is that right?

A. Yes."

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Thereupon Dr. JAMES A. GANNON, a witness on behalf of the defendant, being first duly sworn, gave testimony tending to prove that he is a surgeon, a licensed practitioner in the District of Columbia, chief medical officer and chief surgeon at the Washington Asylum and Jail, associate surgeon at the Georgetown University Hospital and at the Casualty Hospital, and associate professor of surgery at the Georgetown University Medical School; has practiced general medicine and surgery from 1907 to July, 1919, when he began to confine himself to surgery; is a graduate of Georgetown University of the class of 1906; in February, 1919, he was in general charge of the hospital and jail as regards the health of the inmates; there is a staff at the hospital composed of about thirty-two physicians, representing most of the specialties, and was witness' duty to investigate any illness that was more than trivial, and see that the patient obtained proper treatment; in this connection met the defendant, Wan, in his cell at the jail, about February 13th; found him lying in a bunk in the cell, very weak, very much exhausted, very much emaciated; he complained of abdominal pain, which was rather intense. He told witness, and witness afterwards saw, that he vomited if he attempted to take food; that it was difficult or impossible for his bowels to move unless they were assisted by an enema; this witness proved to be true by the later conduct of

the case; found that he was suffering from colitis; when first examined the defendant on February 13th witness thought he was very seriously ill; after witness made his observation of him, ordered certain tests by the laboratory of the institution; had his blood examined, and his abdomen X-rayed, and had him removed from his cell to the Red Cross room, where prisoners are put when too ill to be in their cells; arrived at the fact that he had abdominal pains first by expression, which was one of pain, by his history, in which he told witness he had pains, and then by palpation, or by pressing different parts of his abdomen witness could elicit pain at certain [fol. 146] parts, but not at other parts. After had made certain tests, concluded he was suffering from spastic colitis, and in order to give him the benefit of the best medical advice, asked that the specialist on tests of the digestive tract, Dr. Verbrycke, be sent for, to examine him and give witness a report of his findings. Witness explains the meaning of spastic colitis as follows: "The colon is practically the last six feet of the alimentary tract; it is the large bowel; that large bowel is controlled by two sets of nerves, one set which tends to dilate the bowel and one set which tends to contract the bowel. When these nerves are working as they should, there is a moderate contraction of the bowel, which allows the muscles of the bowel to propel the contents of the alimentary tract. When there is a disturbance of the interrelation between these nerves, if the nerves which control the contraction of the bowel are stimulated very much, the bowel then contracts a great deal more than it should, and a bowel which should have a normal dimension of six inches might contract, and does contract in this case, down to very small. I should say two inches." The result of that contraction would be almost constant pain, excited by any further additions to the contents of the tract at that point, and vomiting and persistent constipation. Food, because of the exciting of nerves of the stomach, would reflexly cause pain; the admission of food into the stomach would send a message down to this portion of the alimentary canal, and that would cause pain; the treatment for spastic colitis, followed by witness's direction was rest, careful diet, and administration of two drugs, one a bromide as a general sedative, and the other a preparation of belladonna, which acts on the nerves in those parts. After witness' diagnosis, visited defendant probably a dozen times. At that time, there was a resident interne at the Washington Asylum. Witness knows defendant was in bed at least a month after his treatment was prescribed. From witness' observation and medical experience, judging from the defendant's emaciation and history he gave witness, and his condition generally, would say that when witness saw the defendant on February 13th he had been ill for a matter of weeks.

Thereupon counsel for the defendant requested leave to call Dr. Augustinus, the resident interne at the jail, and after his testimony to ask Dr. Gannon a hypothetical question; the district attorney stated he did not desire to cross-examine Dr. Gannon until after the hypothetical question. The court asked counsel for the defendant what he wanted to prove by the hypothetical question, to which

counsel for the defendant replied that a man in the condition as described by Dr. Gannon, his power of resistance would not be as great as that of a normal man and he would not be able to withstand the continual questioning and the treatment this man says he was subjected to; the district attorney objected that that is not a matter for expert medical opinion, and the court said, "Absolutely not. The only question, where medical testimony becomes important, is in regard to the mental capacity—whether a man is of sound or unsound mind." Counsel for defendant stated it is not a question of mental capacity; the court said he would not entertain the hypothetical question in any form, saying that a man is either of sound or unsound mind under the law, and whether his physical condition is such that he is debilitated or enfeebled makes no difference whatever as to his guilt or innocence; counsel for defendant stated he thought it did, so far as the confession was concerned, and asked an exception to the refusal of the court to allow such a hypothetical question to be asked, which was duly allowed. Thereupon, in response to questions by the court, the witness said that you probably might call the defendant's ailment acute constipation; that so far as it would affect his mind, the mind would enter into it only "as we would speak of an exhausting psychosis, which sometimes occurs as a result of great pain and great fatigue"; a condition that an individual gets in after he has been exhausted either by pain or fatigue or by loss of sleep, where he really does not realize what he is going; psychosis means a mental condition where a man cannot exercise his faculties in a proper way; constipation is one symptom of a condition, and witness thinks that some fatigue plus great pain would bring it about. Thereupon the following occurred the questions still being asked by the court:

"Question. Of course great fatigue plus great pain—you did not find any of that in this case?

Answer. Oh, yes, indeed.

Question. Great fatigue?

Answer. Oh, yes; he was very much exhausted.

Question. What was the fatigue about?

Answer. He was so that he could not walk.

Question. How do you know?

Answer. Well, I know he was very weak; in bed.

Question. He was emaciated, of course?

Answer. Yes.

Question. And apparently had this colitis. Are you prepared to say that that had any effect on his mind?

Answer. Oh, yes; I am.

Question. You are?

Answer. When we speak of the nervous system, you have got to consider the mind in that.

Question. What do you say; that he was of sound or unsound mind?

Answer. Well, I say in that regard, in so far he was unable to make an important decision, he was of unsound mind.

Question. What do you mean by an important decision?

Answer. He told me—I had to take the history of the case into consideration—he told me that he had been——

Mr. Laskey: I do not think the witness should go into that.

The Court: Let him go ahead.

Mr. O'Shea: The court asks how he arrives at it.

The Court: Go ahead.

Answer. (Continuing:) He told me that he had been talked to all one night and had not received any medical attention, and had been in constant pain all of this time and had been unable to eat for days, and considering all of those facts I came to the conclusion that he was so exhausted that he was really—he told me also that he had signed a confession.

[fol. 148] By the Court:

Question. You thought he was so exhausted mentally that he would not know what he was signing?

Answer. Well, I would not consider the——

Question. (Interposing.) I did not ask you that.

Answer. All right.

Question. Would he know what he was signing?

Answer. He would know what he was signing; yes.

Question. Would he be liable to sign a confession that would lead him to the gallows in that condition?

Answer. I think he would if he wanted to be let alone.

Question. With spastic colitis, if he was accused of crime he would simply sign a paper and say, "You hang me"? That is your opinion as a medical man?

Answer. I say, if he was as sick as that and in as great pain as that, he would do anything to have the torture stopped.

The Court: No other questions."

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Thereupon Dr. LUDWIG AUGUSTINUS, a witness on behalf of the defendant, being first duly sworn, gave testimony tending to prove that in February, 1919, he was an interne in the Washington Asylum and Jail, and saw the defendant in the so-called Red Cross room, set apart for sick persons, on February 17th in bed. He seemed to be in a very weak physical condition, complained of being nauseated in the mornings, of vomiting spells; that he could not stand any food on his stomach, and complained of insomnia and pain in the abdominal region, continuous dull pains and general discomfort; his case seemed to have been diagnosed before witness came, and the medicine which Dr. Gannon had ordered he instructed witness to continue, which witness did. Defendant vomited two or three times during witness' visits to him; defendant was in the Red Cross room, as far as witness recalls, a month and a half after witness came, which was February 15th. Noticed that defend-

ant was nauseated most in the mornings when I went to see him; that he did not sleep at nights, and very often when witness visited the jail at twelve or one o'clock at night would find the light burning in his room, and very often went up and looked in through a little peep hole in the door and found him sitting in bed. His brother was there. Defendant improved to such an extent that he was removed in a month and a half to his cell; from witness' experience as a medical man and his observation his best judgment is defendant had been in the condition witness described about between three and four months; defendant had no appetite and noticed from time to time he would return his meals.

On cross-examination witness said if a man were conscious of the fact that he had killed three men, would not be likely to sleep at night or have a good appetite. In response to questions by the court the witness said defendant was suffering from spastic colitis, or inflammation of the colon, what laymen call constipation; constipation has a depressing effect on the mind; it does not destroy knowledge between right and wrong, and is not insanity alone, but that condition, together with the condition of insomnia and worryment, would aggravate his mind and aggravate this disability.

[fol. 149] Thereupon, with permission to the defendant to call Dr. Verbyrcke subsequently, GUY E. BURLINGAME, a witness on behalf of the Government, already sworn, gave testimony in rebuttal tending to prove that he was given a stick pin by defendant at the jail; and being asked to state the circumstances, the following occurred:

"A. Well, as I have stated before, I visited the jail probably twelve or fifteen different times after these two men were confined there, not for the purpose of——

Mr. O'Shea: I object.

The Court: He may state the circumstances.

Mr. O'Shea: Yes; but not to tell what his purpose was——

The Witness: I think I am entitled to that. The defendant has alleged everything——

The Court: Go ahead.

Mr. O'Shea: Does your honor rule that he can state the purpose?

The Court: No; but he can state the circumstances if he was given a stick pin.

Mr. O'Shea: That is all right, of course, but I do not think it is proper to go into an argument about it.

A. (Continuing:) I visited the jail at different times to fulfil my promise made to him in New York, that I would see he would have every attention and everything he wanted while he was in this weakened physical condition that he claimed he was. I visited the jail, and I took him food and chocolates.



Mr. O'Shea: I submit that he has been over this in direct examination. He was asked a specific instance about a stick pin, and your honor says he can state the circumstances, and to that there is no objection, but for him to go into other stuff I don't think is relevant.

The Court: It is not other stuff; it is the circumstances connected with the giving of the stick pin.

Mr. Laws: Why he gave him the stick pin——

The Court: Make it as short as you can, Burlingame.

A. (Continuing:) I took him, as I say, fruit and chocolate, magazines and cigarettes for his brother, and sometimes two or three trips I made there in reply to messages received from them, sometimes a telephone message which would be passed along through some keeper at the jail, and sometimes a note——

Mr. O'Shea: May it please your honor, may I note an exception to your honor's permitting this witness to go into these details?

The Court: Yes.

A. (Continuing:) On one occasion I received a note from them asking me to look through their baggage——

Mr. O'Shea: I call for the note.

Mr. Laws: Have you got the note?

A. No.

Q. You did not keep it?

A. No. They asked me to send them certain changes in underwear, and certain changes of clothing, and while I was down on this trip they asked me to bring down certain articles of jewelry, and they told me where I could find them, in two or three little boxes. I went down two or three days later, the first opportunity I had, and I took the same things that I had been carrying to them—fruit and [fol. 150] chocolate and papers and magazines. Both of the boys looked over their pins.

By the Court:

Q. You took this case down?

A. No. I took two or three little boxes of stick pins, and a ring and something else.

Q. How long was this after the alleged signed confession?

A. At least—probably ten days or two weeks.

The Court: Do you want it?

Mr. O'Shea: We only want it for the purpose of showing——

The Court: I will strike out the gift of the pin if you object to this testimony.

Mr. O'Shea: I do not object to the gift of the pin. I object to his going over all this, though.

The Court: You can have it or not, just as you wish.

Mr. O'Shea: I object to it.

The Court: Then it goes out. Also all evidence as to his giving him a pin.

Mr. O'Shea: We will not consent to that.

The Court: It does not make any difference whether you consent or not; it is the ruling of the court.

Mr. O'Shea: Very well, we can take an exception.

The Court: Yes, you may have an exception."

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Thereupon, ROBERT V. FLEMING, a witness on behalf of the United States, already sworn, gave testimony in rebuttal tending to prove that he was at 409 15th Street, Washington, D. C., the night Van came from New York, and witness was then asked: "Did you not show him a blank check on the form of the Chinese Educational Mission—and, leaving out what I said about the book—and ask Van if he meant to deny that he was the man who presented the \$5,000 check on that form at the Riggs National Bank, and did not Van state 'that is nonsense,' and that he was never in Washington before and say 'I have never seen you before'?" to which question counsel for defendant objected on the ground that the question assumed that Van did present such a check and that it was asked in the effort to contradict Van about a collateral matter, which objection was overruled, to which action defendant prayed an exception, which was duly allowed, and the witness answered, "Yes," and witness being asked, "And did you not say as follows: 'Don't you remember me as the man who told you that I would not cash the check drawn on that form?' and did he not reply, 'That is nonsense, I never saw you before'?" Counsel for defendant objected on the ground that the matters covered by the question were collateral matters, which objection the court overruled, allowing the defendant an exception to its action, and the witness said "That is correct." Witness was present when Mr. Vass handed Van the card of B. S. Wu at 409 15th Street on the same occasion, and being asked if he heard Van again deny that he had ever been in Washington, counsel for defendant objected on the same ground as to the previous question, which objection was overruled, and defendant allowed an exception, and the witness answered in the affirmative.

[fol. 151] On cross-examination the witness said that he did not receive any envelope, receive a check and letter from Mr. Vass.

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Thereupon, Dr. J. RUSSELL VERBRYCKE, a witness on behalf of the defendant, being first duly sworn, gave testimony tending to show that he is and has been a practicing physician in the District of Columbia since 1906, except for thirty-seven months' hospital experience in the beginning; has been in gastrology in Georgetown University and is the attending gastrologist at the Washington Asylum and Hospital, and connected with various medical societies; was interne at the Garfield Memorial Hospital, and resident physician at Mt. Sinai Hospital, New York City; is a specialist in diseases of the digestive tract; examined the defendant in the Red Cross room of the jail, to the best of his recollection about the middle of February, 1919; found him to be flat in bed, apparently in a weak-

ened condition; obtained a history from the interne before examination, and a better history of his illness from the patient himself; made a rather complete physical examination and found that he had tenderness over the course of his colon or large bowel; this was the only objective symptom that was found outside of the apparent prostration. Witness diagnosed nervous exhaustion and spastic colitis. "Spastic colitis is a catarrhal or inflammatory condition of the colon, which is accompanied by a squeezing down or contraction of the colon or large bowel. This squeezed down condition occurs as the result of an instability or disturbance of the equilibrium between the two great nerve branches, trunks, which control this function of the colon. There is one set of nerves which caused contraction, another which causes dilatation. They are supposed to be at all times in equilibrium between these two systems, so that all the time the colon, as well as all hollow organs in the body, are held under a partial contraction. When this is disturbed in any way, either by a weakening of the nerve, which causes dilatation, or an increase, in turn, of the nerve, which causes contraction, the colon will squeeze down, may squeeze down to one-quarter of the diameter it normally has.

"Q. We have been talking about the colon. What is the colon?

"A. The colon, which is generally known as the large bowel, consists of the last six or seven feet of bowel.

"Q. Where is it found?

"A. It varies in different individuals, just as the shape of one's nose varies, but its general scheme of distribution is that it starts on the right side near the hip bone and runs up to the liver on the right side, making a loop around to the opposite side, and then down. There may be one or more additional loops to it.

"Q. What effect, if any, would that condition have upon the nervous system?

"A. The condition of the nervous system, nervous exhaustion, and this disturbance of nerve relationship of the nerves affecting the colon go hand in hand to a certain extent; any condition which exhausts the nervous system is going to help in producing this condition. When this condition is once started, it, through its pain and other reflex conditions, can react on the nervous system and make that condition so that it works in the order of a vicious circle."

[fol. 152] It is ordinarily a chronic condition; has to start at some time, but tends to run a more or less chronic course; symptoms at time when it becomes worse. Witness' best judgment, considering the fact of the physical condition of the defendant, is that the condition described had existed in the defendant certainly for a matter of weeks; his general condition would of necessity be below par, both physically and nervously. This type of individual has not the resistance of a perfectly normal person; they are easily exhausted and not able to withstand ordinary strains and stress of life as a person with a perfectly normal nervous system—and when I say nervous system I do not necessarily mean any mental derangement, but simply what the ordinary laity know as nervousness.

On cross-examination witness said that colitis is inflammation or a catarrhal condition of the colon, and "spastic" means spasmodic; in other words, defendant had occasional or intermittent constipation. Being asked if any one suffering from that trouble would be more nervous than one who did not have it, says that each reacts upon the other; it is difficult to tell where the cause is, when this sort of vicious circle starts. Each makes the other condition worse. If defendant went through an exciting period that affected his nerves or agitated his nervous system, that would have some effect upon his constipation.

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Thereupon, MORGAN PRIGG, a witness on behalf of the United States, already sworn, gave testimony in rebuttal, that when the defendant came to the Harris Hotel and registered, witness is not sure whether there was any one with him; does not know who was with him, knows assigned him to room alone. Being asked his best recollection as to whether there was any one with him says, would not like to say about that,

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#### DEFENDANT'S REQUESTED INSTRUCTIONS

Thereupon counsel for the defendant moved that a verdict be directed for the defendant on the first three counts of the indictment, which motion the court said would be granted, the district attorney joining in the request.

Thereupon the defendant prayed the court to grant the following instructions to the jury:

1. The jury are instructed that the only object and purpose of an indictment in a criminal case is to inform the defendant of the nature and cause of the accusation against him; that it does not amount to evidence against the defendant in any degree whatever, and the only purpose for which it can be considered by the jury is to determine the charge of which the defendant is accused.

2. The jury are instructed that the presumption is to begin with, that the defendant is innocent of the offense alleged in the indictment. It was not necessary for the defendant in this case to introduce any evidence. The whole burden rests upon the Government, and the defendant could have sat mute and said nothing and produced no witnesses. There is that presumption with which you begin the case, and that presumption stays with the defendant throughout the case, and is a fact to be weighed by you in connection with all the evidence in the case in deciding whether the case is made out. Until your minds are convinced beyond a reasonable doubt, after weighing all the evidence in the case, and after weighing the presumption of innocence that exists in favor of the defendant, that the Government has proved beyond a reasonable doubt each and every material fact essential and necessary to constitute the offense

alleged in the indictment the defendant is to be considered by you innocent, and your verdict should be not guilty.

3. The jury are instructed that in this case the Government is bound to prove the offense charged, and every essential thereof, by evidence which satisfies their mind beyond a reasonable doubt, of the truth of the charges in the indictment and of every element thereof; that is to say, the evidence must be of such force and character as to exclude every reasonable hypothesis of the defendant's innocence, and if it does not do so they must find the defendant not guilty.

4. The jury are instructed that although it is not essential to prove a motive to convict the defendant, yet they are entitled to consider the absence of any motive as a circumstance in favor of the defendant if they find from the evidence in the case an absence of motive.

5. In order to convict it is the duty of the Government to prove beyond a reasonable doubt that the defendant killed the deceased feloniously, wilfully, and with malice aforethought, and if the Government has failed to satisfy the jury beyond a reasonable doubt that the killing was wilful, felonious, and with malice aforethought, the verdict must be not guilty of murder.

6. The jury are instructed that premeditation and deliberation are not presumed from the mere fact that the killing was intentional or that a deadly weapon was used; but they must be satisfied beyond a reasonable doubt by the evidence itself that the defendant did wilfully and with malice aforethought determine to kill the deceased.

7. (NOTE.—No prayer numbered "7.")

8. The law presumes the defendant innocent until proven guilty beyond a reasonable doubt, and if you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence, you should do so, and in that case find him not guilty.

9. (NOTE.—No prayer numbered "9".)

[fol. 154] 10. The jury are instructed that in order to convict the defendant upon circumstantial evidence it is necessary not only to prove that all the circumstances concur to show that he committed the crime charged, but that those circumstances are inconsistent with any other reasonable conclusion than that of his guilt.

It is not sufficient to entitle the prosecution to a conviction that the circumstances coincide with, account for, and render probable the hypothesis of guilt sought to be established by the prosecution, but those circumstances must exclude, to a moral certainty, every other hypothesis but the single one of the guilt of the defendant, or the jury must find the defendant not guilty.

11. The jury are instructed that in this case the evidence of facts and circumstances must be such as to exclude, to a moral certainty, every hypothesis but that of guilt of the offense imputed or, in other

words, the facts and circumstances must not only all be consistent with and point to the guilt of the accused, but they must be inconsistent with his innocence; and unless the facts and circumstances in evidence are sufficient to satisfy your minds and consciences beyond a reasonable doubt that the defendant is guilty, then you should find him not guilty.

11½. The jury are instructed that it is an invariable rule of law that to warrant a conviction of a criminal offense, upon circumstantial evidence alone, such a state of facts and circumstances must be shown as that they are all consistent with the guilt of the party charged, and such that they can not upon any reasonable theory be true and the party charged be innocent.

12. The jury are instructed that the Government has not shown beyond a reasonable doubt that the alleged confession in this case was freely and voluntarily made by the defendant, and that it should be disregarded.

12½. The jury are instructed that the burden of proof is upon the Government to show affirmatively that the alleged confessions were not obtained from the defendant by improper means.

13. The jury is instructed that the burden of proof is upon the Government to prove, beyond a reasonable doubt, that the oral confessions and admissions testified to by its witnesses, and the written confession read to the jury, were of a voluntary character, and that said confessions and admissions were made by the defendant freely, voluntarily, and without compulsion or inducement of any sort.

14. The jury are instructed that in determining whether or not said confessions or admissions were voluntary, the jury may take into [fol. 155] consideration the facts, if they find them to be facts, that the defendant, when he made the said confessions or admissions, was in the custody of the police; that the police repeatedly questioned him and importuned him to talk about the case; that he was ill, that he was under guard and not permitted to communicate with his brother or other persons than the police and doctor; and that the defendant was not warned that the confessions would or might be used against him, or that he was not obliged to make any incriminating statement.

15. The jury are instructed to wholly disregard the alleged confessions unless you believe from the evidence that the same, if any, were freely and voluntarily made. If you believe from the evidence that the confessions, if any, were made on coercion, whether mental or physical, on the part of the officer or officers involved, you will wholly disregard such alleged confessions, if any. The only way in which you can consider the confessions, if any, in evidence, is for you to believe from the evidence that the same were freely and voluntarily made.

16. No confession is deemed to be voluntary if it appears to have been caused by any inducement, threat, promise, or coercion pro-



ceeding from a person or persons in authority, and if such inducement, threat, promise, or coercion gave the defendant reasonable grounds for supposing that by making a confession he would gain some advantage or avoid some evil in reference to the proceedings against him. The police having a prisoner in custody are persons in authority. Any threat or coercion, whether mental or physical, or any hope engendered or encouraged that he will be more favorably dealt with if he will confess, is enough to exclude the confession thereby superinduced, and any words spoken in the hearing of the prisoner, or any coercion, whether mental or physical, which may engender such fear or hope will render it necessary that a confession made within a reasonable time after it shall be excluded unless it is shown by clear and full proof that the confession is voluntarily made after all hope or fear or coercion, whether mental or physical, has been fully withdrawn or explained away.

17. The jury are instructed that where a confession has been obtained under circumstances rendering it involuntary and inadmissible a presumption exists that any subsequent confession arises from a continuance of the prior influence, and this presumption must be overcome before the subsequent confession can be received in evidence. The controlling influence or influences which produced the prior confession is presumed to continue until its cessation is affirmatively shown, and evidence to overcome or to rebut this presumption must be clear, strong, and satisfactory; if there is any doubt on this point, the confession must be excluded.

18. The jury are instructed that if they believe the alleged confessions were obtained by the exercise of undue influence, they must [fol. 156] be disregarded; the exercise of undue influence need not be shown by direct proof; it may be inferred from circumstances, but the circumstances must be such as to lead justly to the conclusion that undue influence was employed and that the confession did not express the real, free, and voluntary thoughts of the defendant.

18½. It is not the means employed so much as the effect produced which must be considered in determining whether undue influence has contributed to the making of a confession; for though the influence exerted over the defendant was such that if applied under ordinary circumstances or exercised over a person of ordinary powers of resistance would be regarded as innocent, yet if in the particular case, by reason of the defendant's physical condition or otherwise, it resulted in the making of a confession or confessions contrary to the defendant's will, the influence was undue, and any confession or confessions obtained under such circumstances should be disregarded by the jury.

19. The jury are instructed that in determining whether the alleged confession or confessions were voluntary or not they should consider the relation of the parties, the conversations between the officers and the defendant, if any, the time and place when the alleged confession or confessions took place, the physical condition of the defendant, and all the circumstances surrounding its making.

19½. The jury are instructed that if they believe from the evidence that the alleged confession or confessions were not those of the defendant, but were caused by suggestions made to the defendant by stronger minds or a stronger mind working upon him, and the confession or confessions were thus induced, then the jury are instructed to disregard such alleged confession or confessions entirely.

20. The jury are instructed that the rule is not that in order to render a statement admissible the proof must be adequate to establish that the particular communications contained in a statement were voluntarily made, but it must be sufficient to establish that the making of the statement was voluntary; that is to say, that from the causes, which the law treats as legally sufficient to engender in the mind of the accused hope or fear in respect to the crime charged, the accused was not involuntarily impelled to make a statement, which but for the improper influences he would have remained silent.

21. The jury are instructed that if they find that the oral incriminating statements and the written confession made by the defendant, if they find he did make them, were not made by him freely and voluntarily, then such oral and written statements are not to be considered as evidence in the case against the defendant, should not be given the slightest consideration as against him, and the case should [fol. 157] be decided as if the testimony in that regard had never been heard by the jury.

The court granted the first, second, third, fourth, sixth, tenth, twelfth and a half, thirteenth, fifteenth, seventeenth, eighteenth and a half, nineteenth and a half, and twenty-first.

The court refused the prayers numbered five, eight, eleven, eleven and a half, twelve, eighteen, nineteen, and twenty, and modified prayer numbered sixteen by striking out the words "the slightest menace," and modified by striking out the last paragraph thereof, granting said prayer as thus modified. To the action of the court in refusing to grant said prayers five, eight, eleven, eleven and a half, twelve, eighteen, nineteen, and twenty, and in modifying, as stated, prayer number sixteen, the defendant prayed a separate and several exception as to each prayer refused and modified, which separate and several exceptions were duly allowed.

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#### CHARGE OF THE COURT

Thereupon the court charged the jury as follows:

"Gentlemen, you have been here for a month, as you know, hearing evidence under an indictment which charges the defendant Ziang Sung Wan with the crime of murder in the first degree, in that on the 29th day of January, 1919, he killed Ben Sen Wu with deliberate and premeditated malice.

The indictment as drawn contains four counts, and I have to state this to you in order that you may clearly understand exactly the question that is submitted to you.

First degree murder in this District consists—I might as well read the section:

“Whoever, being of sound memory and discretion, purposely, and either of deliberate or premeditated malice, or by means of poison, or in perpetrating or in attempting to perpetrate any offense punishable by imprisonment in the penitentiary, kills another, is guilty of murder in the first degree.”

The first three counts in this indictment charge that the defendant killed Ben Sen Wu in attempting to commit different offenses punishable by imprisonment in the penitentiary; that is (1) killing him in an effort to perpetrate a forgery; (2) killing him in an effort at housebreaking; and (3) killing him with intent to commit the crime of larceny.

Now, very properly, in my judgment, the district attorney has withdrawn the first three counts, and I will instruct you to find a verdict of not guilty on those three counts.

The fourth count, however, charges, in proper and apt language, the crime of murder in the first degree, in that the defendant on the day that I have named, with deliberate and premeditated malice, killed Ben Sen Wu. That is the fourth count, and that is the count submitted to you.

The definition of murder in the first degree, as you will see from the section which I have read to you, is statutory, and is applicable where one human being kills another with deliberate and premeditated malice. Murder at common law and second degree murder here is found where the killing is by one human being of another with malice. The distinction between murder in the first degree and murder in the second degree is that in murder in the first degree the malice must be deliberate and premeditated. That simply means that before the act of killing is committed, the defendant [fol. 158] must have deliberated and premeditated for a certain length of time, in which he formed the intention to kill or slay. The law does not provide the length of that time, but it simply must be sufficient that he form the intent which he executed in the act of killing.

Malice itself, which is the only essential ingredient of murder in the second degree, which I have defined to you, does not have the ordinary meaning which we give to it in our colloquial talk, that is, of hatred and ill will towards another. It means that in law but it means more. It means a mind that consciously violates the rights of another, or, as one celebrated judge has put it, a mind of an individual that is fatally bent on mischief towards another. So it does not necessarily imply hatred and ill will towards the individual, but a condition of mind that prompts a man to do an un-awful act detrimental to the rights of another.

Now, in this case the first question I will briefly discuss with you is that of motive. The law does not require that the Government

prove a motive for a crime, as common experience shows you many crimes that we call motiveless; we cannot find a motive, and yet the criminality may exist; but the absence of a motive in any case is a matter to be considered by the jury as any of the facts in the case, in considering the guilt or innocence of the defendant.

In this case, both by the nature of the testimony and by the argument of counsel, it has resolved itself into two parts—I won't say distinct, because they are dependent, interdependent. The first is, Is the defendant proven to be guilty by the circumstances which have been introduced by the Government; and the second is, Is his confession to be taken against him under the rules of law which I will state to you, which, of course, without contradiction, I suppose, on the part of counsel, if it is admitted, will show that he was guilty of this crime?

Taking up first the question of the circumstances, the defendant has asked an instruction which I have granted:

"The jury are instructed that in order to convict the defendant upon circumstantial evidence it is necessary not only to prove that all the circumstances concur to show that he committed the crime charged but that those circumstances are inconsistent with any other reasonable conclusion than that of his guilt. It is not sufficient to entitle the prosecution to a conviction that the circumstances coincide with, account for, and render probable the hypothesis of guilt sought to be established by the prosecution, but those circumstances must exclude, to a moral certainty, every other hypothesis but the single one of the guilt of the defendant, or the jury must find the defendant not guilty."

Now, that requires, while a correct abstract statement of the law, some explanation, and, to make that explanation clear to your minds, I start out with the proposition that in every criminal case the defendant is presumed to be innocent until his guilt is established beyond a reasonable doubt. That applies whether the evidence is circumstantial or direct; and when we state the rule as to circumstantial evidence we do not cast any reflection upon that form of proof; the law does not; it simply means that your minds must be satisfied beyond a reasonable doubt as to the guilt of the defendant, whether the evidence be circumstantial or direct.

That makes it necessary to define what a reasonable doubt is. A reasonable doubt in a criminal case is that condition of your minds [fol. 159] when you can not say that you have an abiding conviction to a moral certainty of the defendant's guilt. So that if by circumstantial evidence you are satisfied beyond a reasonable doubt, as I have just defined it, of the defendant's guilt, it is equally your duty to bring in a verdict of guilty as if the testimony was that of an eyewitness.

That brings us to the subject of the confession. The highest court in our land has declared that a confession—I am going to read the exact language—"if freely and voluntarily made, is evidence of the most satisfactory character." That is the decision of the Supreme Court of the United States.

You will notice the language "if freely and voluntarily made." That means, of course, the word "voluntary" is rather obscured to my mind by definition than elucidation. We all know what "voluntary" is—the free act of the will to do this or that thing, and not a will driven or compelled by another. I say again I hardly think that explanation or exposition can add anything to the word "voluntary." We know whether we act voluntarily or whether we do not; and so, in the law of confessions, which, as I say, are regarded most highly, if they are freely and voluntarily made, we have to inquire in every case whether a confession is free and voluntary.

Counsel for the defendant in this case has drawn a number of instructions, some of which are perhaps repetitions, upon the point of law as to whether the confession is free and voluntary. The first I will read to you is 12½: "The jury are instructed that the burden of proof is upon the Government to show affirmatively that the alleged confessions were not obtained from the defendant by improper means." I would say "the alleged confession was not obtained from the defendant by improper means."

Again: "The jury is instructed that the burden of proof is upon the Government to prove, beyond a reasonable doubt, that the oral confessions and admissions testified to by its witnesses, and the written confession read to the jury, were of a voluntary character, and that said confessions and admissions were made by the defendant freely, voluntarily, and without compulsion or inducement of any sort."

"The jury are instructed that in determining whether or not said confessions or admissions were voluntary, the jury may take into consideration the facts, if they find them to be facts; that the defendant, when he made the said confession or admissions, was in the custody of the police; that the police repeatedly questioned him and importuned him to talk about the case; that he was ill; that he was under guard, and not permitted to communicate with his brother or other persons than the police and doctor; and that the defendant was not warned that the confessions would or might be used against him or that he was not obliged to make any incriminating statement."

Now, that instruction, while containing again what we might call an abstract statement of law, might be very misleading, and, in order that you may have what I consider to be law upon the subject, I will, in my own language, give you what I take to be the law relating to confessions. It is not only the right, but it is the duty of the officers of the law to examine and question those whom they [fol. 160] have reason to suspect are guilty of a crime. If that were not the rule, their duties to the community would not be performed. Nor does the fact that they are officers, and in uniform, if need be, make any difference about their right to examine or question defendants. Nor does the fact that they do not warn the defendant that he need not talk, and that what he says may be used against him. That fact in itself does not invalidate a confession. That might not apply in this case, for the reason that, apparently,

from the written confession here, this defendant was warned that what he said might be used against him. But no one of those facts, standing alone, invalidates a confession or prevents its admissibility. The test of the case, and the inquiry that you will have to make in answer is: Did the questioning, did the physical condition, did the importunate questioning, if you choose to call it so, render the confession made by this defendant not his own; but did it substitute for his will the will of another, and thus was it or not his voluntary act? It is impossible to define the limit to which an officer may or should go in detecting or attempting to detect crime. On the one side he has his duty to the public, to us, always. On the other hand, he must not infringe upon the rights of the citizen, no matter who he may be. He must leave the confession in such a way that you can satisfy yourselves that it is the ultimate expression of the will of the defendant, the voluntary statement of what he knows about his connection with the case. I am repeating, now, what I have said, but this is asked by the defendant:

"The jury are instructed to wholly disregard the alleged confessions unless you believe from the evidence that the same, if any, were freely and voluntarily made. If you believe from the evidence that the confessions, if any, were made on coercion, whether mental or physical, on the part of the officer or officers involved, you will wholly disregard such alleged confessions, if any. The only way in which you can consider the confessions, if any, in evidence is for you to believe from the evidence that the same were freely and voluntarily made."

As I say, that must be taken in connection with what I have defined to you to be the right and duty of the officers in attempting to find out those who are responsible for criminal acts.

"No confession is deemed to be voluntary if it appears to have been caused by any inducement, threat, promise, or coercion proceeding from a person or persons in authority, and if such inducement, threat, promise, or coercion gave the defendant reasonable grounds for supposing that by making a confession he would gain some advantage or avoid some evil in reference to the proceedings against him. The police having a prisoner in custody are persons in authority. Any threat or coercion, whether mental or physical, or any hope engendered or encouraged that he will be more favorably dealt with if he will confess is enough to exclude the confession thereby superinduced, and any words spoken in the hearing of the prisoner, or any coercion, whether mental or physical, which may engender such fear or hope will render it necessary that a confession made within a reasonable time after it shall be excluded, unless it is shown by clear and full proof that the confession is voluntarily made after all hope or fear of coercion, whether mental or physical, has been fully withdrawn or explained away."

Now, in this case, as you will all recall from the evidence, this defendant was questioned for a period of practically a week in what appeared to be comfortable quarters in a hotel in this city. He was excluded from having his brother visit him, which, to my mind, was not an act of coercion on the part of the police. There is,



a certain amount of discretion that must be used by those who are employed to enforce the law, and it seems to me that was not unreasonable. That he was ill is undoubtedly true; that he had food is undoubtedly true, if he wanted it; and, as I say, the view that is presented to you is a view to be taken as a whole: Was this man's confession of his own free will or was he coerced by intimidation, threats, or promises? Now, it appears that Burlingame had a conversation with him, I think at the station, which led up to this subject of the signed confession. If I am mistaken about that, correct me. I think it was the station house.

Mr. O'Shea: It was at the mission house that Burlingame made the notes, before going to number ten station.

The Court: Where was it Mr. Burlingame took the notes?

Mr. Laskey: At number ten.

Mr. O'Shea. At the mission house on Monday morning.

The Court: He took the notes at the mission house, and afterwards he met the defendant, in company with a stenographer, and the defendant asked Mr. Burlingame to ask him the questions and he would answer them. These questions were taken down in shorthand, and transcribed, presented to the defendant, and he signed the entire confession and initialed each page of it.

Now, of course, that was the most important statement, if it was admissible at all in evidence, that he made, and it is for you to determine on this subject of the admissibility of the confession whether, taking all the treatment which he had received prior to that time, he was in such condition when he signed that statement and initialed those pages that he was acting of his own free will and accord.

There have been different questions discussed about the weight to be given the testimony of witnesses which is in contradiction. It is for you gentlemen to pass upon the weight and credibility you will give to the testimony of every witness. One of the things you should examine is the interest any witness may or may not have in the case, and that is to be considered in determining whether you will give credence to his testimony or not. And that applies to the defendant as well as to all other witnesses for the Government.

Now, in this case the district attorney has argued, and it is a question entirely for your solution, if you should come to the conclusion that the confession was not voluntary and is not to be considered by you, whether you are yet satisfied beyond a reasonable doubt that the circumstances which are established independently of the confession show the guilt of the defendant. If you do so conclude that the confession is not admissible but are satisfied beyond a reasonable doubt that the circumstances show his guilt under the fourth count of the indictment, then your verdict should be guilty as indicted.

You will elect one of your members as foreman, and you will take the indictment with you to your room.

Mr. O'Shea: Did your honor explain to the jury that they must return a verdict of not guilty on the first three counts?

[fol. 162] The Court: I did that at the outset, but I will repeat it. I say, on the first three counts you will bring in a verdict of not guilty, by direction of the court."

### OBJECTIONS AND EXCEPTIONS TO BILL OF EXCEPTIONS

Thereupon counsel for the defendant objected to that portion of the charge wherein the court stated that the keeping of the brother away from the defendant was not coercion, which objection the court overruled, to which action the defendant prayed an exception, which was duly allowed.

That thereupon the time for signing and sealing this bill of exceptions having been duly extended, and Ashley M. Gould, the judge who presided at the trial, having died, the defendant, on the 28th day of October, 1921, filed objections to the signing and settling of the bill of exceptions, all of which objections were overruled by the court, and the defendant allowed exceptions.

That the defendant on the 22nd of November, 1921, filed a motion to vacate the judgment, set aside the verdict, and grant a new trial, which the court after hearing overruled and allowed the defendant an exception.

All of the exceptions hereinbefore stated and taken at the trial were duly noted by the court on its minutes and at the same time were severally noted and taken before the jury retired to consider its verdict, and being advised by the court that if he could satisfy himself in accordance with section 953 of the Revised Statutes of the United States that he could allow a true bill of exceptions he would allow and sign the same, defendant, by his counsel, while not stipulating as to the correctness of any part of the bill insisting that he can do so and insisting on the right of defendant to a new trial, but in order to assist the court in his purpose aforesaid specifically objects and excepts to the following parts of the bill of exceptions, upon the ground that the only one who could, as matter of law in each instance and as matter of fact in various instances, settle the questions in these various parts of the bill of exceptions is the late Justice Ashley M. Gould:

Bill of ex. at p. 16 states that Diehl #7 was not read to the jury. Counsel for defendant maintain this does not appear from transcript. (Trans., pp. 364-5.) The court, having examined the stenographic transcript of testimony, and counsel for the United States having agreed that the statement referred to may be stricken out of the bill of exceptions, the court struck out said statement in the bill of exceptions, whereupon counsel for defendant renewed their objections to the authority of the court to settle the bill of exceptions or any part thereof, which objection the court overruled and allowed defendant an exception.

Counsel for defendant maintain that "Ratcliffe #2 does not show, as the bill states, the balance in bank on January 31, 1919. Bill, p. 21. (Trans., p. 389)." The court on inspection of the bill of

exceptions and the stenographic transcript of testimony finds that the recital in the bill of exceptions is correct, and over the objection an exception of counsel for the defendant as to this particular finding as well as the authority of the court to settle the point, settles the point in controversy by refusing to amend the bill of exceptions in this particular as written.

Counsel for defendant objects: "What was Ratcliffe No. 8 (p. 22 of the bill; p. 391 of Trans.)? Does not appear from the bill." The [fol. 163] court upon inspection of the stenographic transcript of testimony and the original exhibit filed in the case, rules that a photostat of said Exhibit Ratcliffe No. 8 may be inserted in the bill of exceptions, to which ruling of the court counsel for defendant objects, and said objection being overruled, defendant is allowed an exception.

Counsel for defendant maintain "it should appear at p. 23 of the bill that the statement of the witness as to what the card showed about the introduction was stricken out." The court having inspected the stenographic transcript of testimony and the counsel for the United States having agreed to the position in this regard of counsel for defendant, the court ruled that the bill of exceptions should be made to show that said statement of the witness was stricken out, and the bill of exceptions was made to read accordingly, over the objection and exception of defendant to the authority of the court to so rule.

Counsel for defendant maintain that the word "only" as the third word in line 10, page 31 of the bill, should be inserted. The court after inspecting the stenographic transcript of testimony and counsel for the United States having agreed thereto, ruled the word "only" should be inserted as claimed by counsel for the defendant, and the insertion was accordingly made in the bill of exceptions.

Counsel for defendant state that there should be stricken out p. 54 of the bill: "Witness knew by the marks he found where it struck the wall and then fell on the floor." The court upon inspection of the stenographic transcript of testimony ruled that there should be inserted in the bill of exceptions the exact language of the stenographic transcript of testimony, and the bill of exceptions was made to read accordingly, to which ruling and action of the court counsel for defendant objected, and, being overruled, noted an exception, which was duly allowed.

Counsel for defendant maintain with reference to p. 55 of bill: "It does not appear from the transcript (818 et seq.) that, as stated in the bill, p. 55. Sandberg No. 11 is photograph of stub 24 in the check book." The transcript in regard to Sandberg No. 11 shows the following:

"Q. Now, Mr. Sandberg, taking up Sandberg eleven, I ask you from what you took that picture.

"A. From the stub in the check book brought to my office.

"Q. (Handing photograph to witness.) And I will ask you to—

"Mr. O'Shea (interrupting): Your honor will remember that at the present time there is no connection, so far as the exhibit is concerned, other than the opening statement of the district attorney.

"Mr. Laws: It goes in, subject to being connected up.

"The Court: You heard the proffer of the district attorney?

"Mr. O'Shea: Yes.

"The Court: It is on the strength of that proffer that I am admitting this testimony.

"Mr. O'Shea: But does not your honor think that the proper thing to do would be to connect this up at the end?

"Mr. Laws: I am not offering to show this to the jury at the present time.

"The Court: They are not offered in evidence now.

"Mr. O'Shea: I will save my exception, if the court please.

"The Court: Certainly.

[fol. 164] "By Mr. Laws:

"Q. I show you, Mr. Sandberg, Dent Exhibit number twenty-four, and I ask you if that is the one that you took it from?

"A. Yes, sir."

The stenographer's minutes in regard thereto are lost, but the court, upon inspection of the original exhibits in the case, finds there is no exhibit known as Dent No. 24, and further finds that Sandberg No. 11 is photograph of stub 24 in the check book and declines to amend the bill of exceptions in this particular, to which action of the court counsel for defendant objected, and, objection being overruled, noted an exception.

Defendant maintains that "it should appear, p. 66, of the bill, in reference to Burlingame No. 1, that said exhibit had something on it that had been stricken out by the defendant." The court upon examination of the stenographic transcript of testimony, and counsel of the United States having agreed thereto, ruled in accordance with position taken by defendant in this particular, and the bill of exceptions was amended accordingly, counsel for defendant renewing their objection and exception to the authority of the court to settle the bill or any part thereof.

Counsel for defendant maintain "the word 'defendant,' lines 11-12, p. 67 of the bill, should be 'Van' (Trans., p. 895)." The court upon examination of the stenographic transcript finds the word "Van" appears instead of "defendant," and after interview with the stenographer who reported testimony at the trial, finds the word "Van" was mistakenly transcribed from the notes of the stenographer, that the word should have been "Wan," and, therefore, the court refuses to allow the defendant to amend the bill of exceptions in this particular, to which action of the court counsel for defendant objected, objection overruled, and exception noted.

Counsel for defendant maintain "On page 67 of the bill, 9th line from bottom, after the semicolon, substitute 'Witness does not know whether he was questioned any more that night at Dewey Hotel,' for 'was not questioned any more that night by witness nor by anyone else that witness knows of.'" The court after examination of the stenographic transcript of testimony and upon agreement of counsel for the United States, ruled that said substitution should be made

and the bill of exceptions was amended accordingly, over the objection and exception of defendant's counsel to the authority of the court to settle the bill or any part thereof.

Counsel for defendant maintain that "page 70 of the bill, 9th line from bottom, should be '10 or 11 that night' instead of '10 or 10.30 that night.'" The court, upon examination of the transcript of record, ruled that the exact language of the transcript of record on this subject should be included in the bill of exceptions, and the bill of exceptions was made to read accordingly, to which action of the court counsel for defendant objected upon the grounds aforesaid, including the specific manner in which this question is attempted to be settled, objection overruled, exception noted and allowed.

Counsel for defendant maintain "after period, line 18, p. 135 of the bill, insert: 'Witness being asked if it was not the purpose of the witness to bring home knowledge to Wan about the bank, answers if you will say "about the transaction," I will say "yes."'" The court, upon examination of the stenographic transcript of record and upon consent of counsel for the United States, rules said [fol. 165] insertion should be made in the bill of exceptions, and said insertion was accordingly made, the defendant reserving his exception, which was allowed, to the action of the court in attempting to settle the bill or any part thereof.

Counsel for defendant maintain "at the end of the first paragraph of p. 238 of the bill of exceptions the defendant should be allowed an exception to the cross-examination of the defendant by the court, beginning at the last paragraph of p. 233 and ending with the end of the first paragraph on p. 238 of the bill of exceptions; and it should appear affirmatively by the bill of exceptions that the words—"Without exception? Mr. O'Shea. Yes," in the 2nd line of p. 239 of the bill of exceptions were not used in the sense that the defendant's counsel did not object to the cross-examination of the defendant by the court aforesaid and should not be allowed an exception thereto by reason of its nature being such as seriously and erroneously to prejudice the defendant's cause with the jury and to wrongfully influence the latter to the prejudice of the defendant." Upon examination of the stenographic transcript of testimony the court ruled that an *except* copy of the stenographic transcript of testimony in this particular should be included in the bill of exceptions, and the bill of exceptions was made to include said exact copy of the stenographic transcript of testimony, to which ruling and action of the court counsel for defendant objected upon the grounds previously stated, and upon the further ground that the action of the court in this regard does not in fact settle the question raised; objection overruled and exception noted and allowed.

Counsel for defendant maintain "that the last paragraph of page 211 of the bill of exceptions does not correspond with the stenographic transcript, pages 1706 and 1707." The court upon examination of the stenographic transcript of testimony ruled that an exact copy of the said stenographic transcript of testimony in this particular should be inserted in the bill of exceptions, and the bill of exceptions was amended accordingly, to which ruling and action of the

court counsel for defendant objected; objection overruled and exception noted.

Counsel for defendant maintain "on page 213, line 6, after the word 'after' the word 'witness' should be inserted." The court after examination of the stenographic transcript of testimony, and counsel for the United States having agreed thereto, ruled that insertion should be made in the bill of exceptions, as stated by counsel for defendants, and said insertion was accordingly made in the bill of exceptions.

Counsel for defendant maintain "on page 223, the last line, the word 'wire' should be stricken out." The court upon examination of the stenographic transcript of testimony, and counsel for the United States having agreed thereto, ruled that said word should be stricken out, as stated by counsel for defendant, and said word was accordingly stricken out of the bill of exceptions, counsel for defendant renewing their objection and exception to the authority of the court to settle the bill or any part thereof.

Counsel for defendant maintain "on page 240, line 6, the failure to insert the entire transaction as recorded on page 1842 of the stenographic report." The court upon examination of the stenographic transcript of testimony ruled that the exact language of the stenographic transcript of testimony in this particular should be inserted [fol. 166] in the bill of exceptions, and insertion was made accordingly, to which ruling and action of the court counsel for defendant objected; objection overruled and exception noted and allowed.

Counsel for defendant maintain "the bill of exceptions, p. 54, should show that the defendant was allowed an exception to the admission in evidence of Exhibit Sandberg 10." The court upon examination of the stenographic transcript of testimony ruled that the exact language of said stenographic transcript of testimony in this particular should be included in the bill of exceptions. Accordingly said portion of the stenographic transcript of testimony was inserted in the bill of exceptions, to which ruling and action of the court defendant objected upon the grounds previously stated and upon the further ground that the action of the court in this regard does not in fact settle the question; objection overruled and exception noted and allowed.

And specifically reserving his exception to the general authority of the court to sign the same, defendant's counsel moved the court to sign this, his bill of exceptions, to have the same force and effect as to each and every of said exceptions as though the same were set forth in separate bills of exceptions, which motion is granted.

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#### ORDER SETTLING BILL OF EXCEPTIONS

And the court, Ashley M. Gould, justice presiding at the trial, having died in the meantime, Walter I. McCoy, chief justice, now presiding in Criminal Court No. 1, over the objection and exception on behalf of the defendant, after an examination of the typewritten



transcript of the stenographic notes of the trial, certain original exhibits used at the trial, and interviewing the stenographer who reported the proceedings at the trial as to the points where it is stated in the bill such notes were consulted, being satisfied that he can allow a true bill of exceptions because where the transcript of the stenographer's minutes has been relied upon it is *it is* not disputed or admitted that the transcript correctly reports what took place at the trial, and because where the stenographer's minutes and the transcript thereof differed it is not disputed or admitted that the minutes are correct, and because where there has been a difference as to exhibits a comparison by the court of the exhibits is relied upon to sustain the ruling of the court, has accordingly signed this the defendant's bill of exceptions and made the rulings in regard to the bill of exceptions aforesaid, to have the force and effect as aforesaid now for then this 30th day of November, A. D. 1921.

Given under my hand and seal this day and year aforesaid.

Walter I. McCoy, Chief Justice.

And to the signing of this bill of exceptions by the chief justice, who was not in fact the presiding judge at the trial and consequently is unable to settle the bill of exceptions, and counsel not stipulating as to the correctness of the bill of exceptions for this reason has taken and the court has allowed an exception.

Walter I. McCoy, Chief Justice.

[File endorsement omitted.]

[fol. 167]

Tuesday, April 3rd, A. D. 1923.

\* \* \* \* \*

No. 3807

[Title omitted]

#### ARGUMENT AND SUBMISSION

The argument in the above entitled cause was commenced by Mr. Chas. Fahy, attorney for the appellant, and was continued by Mr. J. H. Bilbrey, attorney for the appellee, and was concluded by Mr. J. A. O'Shea, attorney for the appellant. On motion the appellant is allowed to file a reply brief herein if so advised.

## [fol. 168] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 3807

[Title omitted]

Before Smyth, Chief Justice, and Robb and Van Orsdel, Associate Justices

## OPINION

Mr. Justice Van Orsdel delivered the opinion of the court:

VAN ORSDEL, Associate Justice: Appellant Ziang Sun Wan appeals from a verdict and judgment in which he was found guilty of murder in the first degree and adjudged to pay the death penalty.

It appears that about January 22, 1919, defendant Wan came from New York to Washington and stopped at the Chinese Educational Mission, which at that time was conducted by Dr. Thomas T. Wong, Director, C. H. Hsie, Secretary-Treasurer, and Ben Sen Wu, Secretary and Clerk. Defendant remained at the Mission, located at [fol. 169] 2023 Kalorama Road, this City, until January 27th, when he procured a room at the Harris Hotel. On the same day he telegraphed his brother Van in New York City to come to Washington. On the next day he sent a second telegram to his brother urging him to come immediately. In the following day the brother arrived and was seen at the Harris Hotel between 9:00 and 10:00 o'clock A. M. On the evening of January 29th Kang Li, a student under the supervision of the Mission, called at the Mission and defendant came to the door. He inquired whether Mr. Wu or Dr. Wong were at home. Defendant replied that they had gone out and that he was going out later. About midnight Wan and his brother Van were seen together at the Harris Hotel.

The testimony on behalf of the Government shows that on the following morning, January 30th, defendant and his brother engaged a taxicab near the Union Station and drove to the Riggs National Bank, where Wan remained in the cab while Van entered the bank and presented for payment a check in the sum of \$5,000, purporting to be signed by C. H. Hsie and Dr. Wong and drawn upon the account of the Chinese Educational Mission. The bank, after some investigation and at the suggestion of the brother, telephoned the [fol. 170] Mission but received no reply. The bank then refused to cash the check without further identification and defendant and his brother returned to the Union Station, where the brother paid for the use of the taxicab. About noon of the same day defendant checked out at the Harris Hotel, and about 5 o'clock in the evening the brother was seen near his lodging place in New York, and defendant was seen at a Chinese café in that City at 7:45 P. M. of the same day.

It further appears that Dr. Wong and Hsie were last seen alive between 10 and 11 o'clock on the night of January 29th. On January

30th a letter-carrier made three attempts to deliver mail at the Mission but no one responded. On the evening of January 31st, the Chinese Legation caused the Mission to be entered by Kang Li, who found the body of Dr. Wong in the reception hall with two gunshot wounds in his chest, one of which had entered the heart; and the bodies of Wu and Hsie were found in the basement, one having gunshot wounds in the chest and the other a gunshot wound in the head. A 32 caliber revolver was found on a chair in the basement.

On February 1st, defendant was arrested in New York and, together with his brother Van, brought to this city. Defendant gave conflicting accounts as to his whereabouts after leaving the Mission on January 27th. He first said that he had left Washington on [fol. 171] that date, but when confronted by Kang Li, who saw him at the Mission on the evening of January 29th, he then said that he left Washington on the 29th. When questioned he insisted that he had taken dinner with Hsie and Wong on the evening of January 29th, and that Wong had gone with him to the Union Station where he took a train leaving for New York. When his attention was called to the fact that Wong had dined on the 29th with a Mr. Jeffers, defendant admitted that Wong did not dine with him, but insisted that he did go with him to the station.

Defendant was held in custody at a hotel until February 8th, when, at his request, he was taken by the officers to the mission. He was there confronted with photostat copies of his own handwriting, and also a photostat copy of a check stub, from the check book of the Chinese Educational Mission, upon which was written "T. T. Wong, \$5,000." When confronted with the copies of his own writing and the check stub he finally admitted that he had written the check.

From the Mission House the defendant was taken to the Police Station and there charged with murder. On the following day the defendant told the officers that he saw the three Chinamen killed and that a Chinaman named Chen had killed them. When urged for an account in detail, he answered that he was tired, but [fol. 172] would tell them about it the next day. The following day he again requested to be taken to the Mission, and when they arrived there he began to explain in detail how Chen had killed the three men, but on being told by an officer that he knew that Chen had not committed the murder, defendant then said in effect that he and Wu were engaged in forging the \$5,000 check, when Wong and Hsie came into the house; that Wu having procured the revolver killed Wong and Hsie and that he, defendant, a short time after shot Wu. On the following day, February 11th, defendant made a detailed statement to an officer which was taken down stenographically, transcribed, and on February 12th signed by the defendant.

It will be observed that the greatest deliberation and consideration was displayed by the officers toward defendant when he first suggested at the Police Station, on Sunday evening, following the first visit to the Mission house, that he witnessed the murder. When pressed for details, he "said he was tired wanted to go to sleep

would talk no more tonight." They left him to consider the matter until the next morning, when they again visited him in the Police Station and at his request he was taken to the Mission, where he began to detail the killing, charging Chen with the killing of Wu. At this point one of the officers said "Wan you know how [fol. 173] this happened. You put a man by the name of Chen in it. I know there was no Chen. You are the man that you are placing here in the story as Chen." After hesitating a minute defendant said "Yes, I will tell you the whole truth. Chen was not in it." After detailing the killing, as already outlined, he was taken back to the Police Station, and not until the next day was he questioned for the purpose of procuring a stenographic report, and not until the following day was he presented with the extended report for his signature. Through all this period he had an opportunity to deliberate upon the effect the making of the confession would have upon his case. It also appears from the signed confession, that before making the statement he was cautioned by the officer as follows: "We would like for you to make a statement. Your statement must be voluntary and if you make it I want to tell you it will be used against you in court. You do not have to make a statement unless you want to. I just want to inform you of your rights in the matter."

The defence offered as a witness defendant's brother Van, who testified that on January 30th he and defendant went to the Union Station where they met two Chinamen, T. P. Wong and Moy whom Van had met the day before; that Wong told Van that he had a check which he wanted cashed; that he did not speak English very [fol. 174] well, and that he wanted Van to help him cash the check. He testified that it was Wong and not Wan who went with him to the Riggs Bank and remained in the taxicab while he was in the bank attempting to have the check cashed, which he alleges Wong had given him.

The defendant took the stand on his own behalf and denied all connection with the murder, corroborated his brother to the effect that it was Wong and not he who went with Van to the bank; denied that he admitted that the signature on the check stub was his, and accounted for the signed confession on the theory that the officers had importuned him to confess, threatened him, and used abusive language toward him. He testified in substance that when he signed the confession he knew what he was doing, but that he signed it because he was sick and wished to be left alone.

The testimony of defendant was in the nature of a general denial of the evidence given by the officers and witnesses on behalf of the Government, especially as to defendant's alleged treatment by the officers which he claims induced him to confess. This, however, presented a well defined issue of fact as to whether or not the confession was voluntarily made, and, like all other issues of fact, was one for the consideration of the jury. The issue of the voluntary [fol. 175] or involuntary character of the confession was submitted to the jury in a very full and complete charge, in part as follows: "The test of the case, and the inquiry that you will have to make in

answer is: Did the questioning, did the physical condition, did the importunate questioning, if you choose to call it so, render the confession made by this defendant not his own; but did it substitute for his will the will of another, and thus was it or not his voluntary act? It is impossible to define the limit to which an officer may or should go in detecting or attempting to detect crime. On the one side he has his duty to the public, to us, always. On the other hand, he must not infringe upon the rights of the citizen, no matter who he may be. He must leave the confession in such a way that you can satisfy yourselves that it is the ultimate expression of the will of the defendant, the voluntary statement of what he knows about his connection with the case."

Coming to the assignments of error, 127 in number, they may be classified under a very few heads. An officer testified that while defendant was at the hotel he was being questioned by the witness respecting the taking of the check to the bank. The officer asked him who went to the bank, suggesting "that has nothing to do with the murder, tell me who went to the bank;" and the defendant said [fol. 176] "Mr. Grant, after what you said, who is the man who went to the bank; who is the murderer?" Counsel for defendant moved to strike out this statement for the reason that it was not shown to have been voluntarily made, but was made in reply to an inducement by the officer. Counsel seems to have regarded the statement as a confession. It was not even an admission of defendant's connection with the transaction. It was a mere casual observation which an innocent bystander might logically have made. At the stage of the investigation when the statement was made, it had not more significance, coming from guilty lips, than if it had been innocently uttered. It only became a significant circumstance, when in his confession defendant subsequently admitted that he and his brother took the check to the bank, and his further statement in the confession that the forgery of the check was directly associated with the commission of the murder.

The admissibility of the written confession and the testimony relating to the admission of the handwriting by defendant are challenged. As to the alleged admission respecting the handwriting, it does not come within the category of a confession, since it is admitted by defendant in his signed confession, testified to by the officers, and denied by defendant on the witness stand. Hence it is reduced to a mere fact or piece of competent evidence upon which [fol. 177] there was a conflict in the testimony, and which was properly submitted to the jury for its consideration.

The term confession has no application to a mere admission or statement of an independent fact from which guilt may be inferred; or even to incriminating acts. *State vs. Campbell*, 73 Kans. 688; *Rusher vs. State*, 94 Ga. 363. In other words, an admission not of guilt, but tending merely, in connection with other facts, to establish guilt, does not amount to a confession. *McGehee vs. State*, 171 Ala. 19, 21; *People vs. Jan John*, 144 Cal. 284; *State vs. Willis*, 71 Conn. 293; 2 *Wigmore on Evidence*, Sec. 1050.

A confession is a declaration made by a person charged with crime

acknowledging his participation in its commission. Confessions may be either voluntary or involuntary. If voluntarily made they are admissible as competent evidence against the accused, otherwise the question arises as to whether the confession was extorted by fear or induced by hope of benefit. In other words, whether the person to whom the confession is made induced it by promises exciting hopes, or by actual threats.

The rule as to the admissibility of confessions is concisely stated in [fol. 178] 3 Russell on Crimes (6th Edition), 478, and approved in *Bram vs. United States*, 168 U. S. 532, 542, as follows: "But a confession, in order to be admissible, must be free and voluntary: that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence. \* \* \* A confession can never be received in evidence where the prisoner has been influenced by any threat or promise; for the law cannot measure the force of the influence used, or decide upon its effect upon the mind of the prisoner, and therefore excludes the declaration if any degree of influence has been exerted."

In all cases, however, the confession must have been induced by the excitation of hope or fear arising from an actual threat or promise made by a person in authority. *Hardy vs. United States*, 3 App. D. C. 35, 46. Or as concisely summarized in the *Bram* case "it must necessarily have been the result of either hope or fear, or both, operating on the mind." In the last analysis there is little distinction between a promise and a threat made by one in authority. The promise implies leniency toward the defendant, while the threat implies that the inducement for making the confession is that the law will deal more leniently with the accused. It follows, therefore, that in both instances the hope of leniency is the inducing cause.

[fol. 179] It is not, however, contended by defendant that he was induced to make the confession through any promise of hope held out by the officers. While he undoubtedly thought that leniency and mercy might result from confession, his excuse for making it is that they importuned him with questions and used abusive language toward him, neither of which are within the category of promise or threat. The crucial test to be applied in determining whether or not a confession is voluntarily or involuntarily made, depends upon its truth or falsity. As was said by the court in *Commonwealth vs. Dillon*, 4 Dall. 115, 117: "If such declarations are voluntarily made, all the world will agree, that they furnish the strongest evidence of imputed guilt. The hope of mercy actuates almost every criminal who confesses his crime; and merely that he cherishes the hope, is no reason, in morality, nor in law, to disbelieve him. The true point for consideration, therefore, is, whether the prisoner has falsely declared himself guilty of a capital offense? If there is ground even to suspect, that he has done so, God forbid, that his life should be the sacrifice!"

Applying this rule, the present confession accords with every reasonable theory of guilt. All the circumstances in the case corroborate



it. Therefore, its admissibility, as competent evidence for the consideration of the jury, is supported by every principle of law. Certainly the evidence tending to show that it was involuntarily made was not so conclusive as to justify the court in excluding the confession from the jury. It was submitted properly, as an issue in the case, and the jury found that it was voluntarily made. This conclusion is amply supported by the evidence in the case.

On the question of motive, evidence of the financial condition of defendant at and prior to the time of the homicide was admitted over the objection and exception of defendant. Those transactions had direct relation to the Mission. Two checks he had received from Wu—one on the 27th, the day he left the Mission. He was presumably indebted to Wu at the time of the homicide. These facts taken in connection with his confession that the forgery was committed to get some of the Mission's money, and the further fact of his attempt to cash the forged check, all tend to establish the motive for the commission of the crime. "Wide latitude is allowed the prosecution in criminal trials, in ascertaining the motive that actuates the commission of crime." *Lomax vs. United States*, 37 App. D. C. 414, 417.

The judge who tried the case in the court below died before the bill of exceptions was signed. The bill was settled and signed by the [fol. 181] Chief Justice of the Supreme Court of the District. It is insisted that no such power was reposed in the Chief Justice, and that the case should have been restored to the docket for a new trial. This exception is fully disposed of in *Roney vs. United States*, 43 App. D. C. 533, where it was held that Sec. 953 R. S. as amended by Act of Congress of June 5, 1900 (31 Stats. L. 270), providing that in the case of the death of the presiding judge, any judge of the same court may settle and sign a bill of exceptions, applies to the District of Columbia. The law on this point, therefore, may be regarded as settled by the *Roney* case.

When defendant was on the witness stand the court examined him at length, evidently for the purpose of ascertaining whether or not the confession had been voluntarily made. This examination by the court is assigned as error. It appears, however, that when the court concluded its examination, the judge, of his own volition, directed the reporter to strike out the last question and answer, instructing "the jury to disregard it," whereupon counsel for defendant objected to the action of the court, insisting that "it should stay in the record." To this the court replied, "all right, it goes." The District Attorney inquired if "he wanted it to go to the jury." Counsel [fol. 182] for defendant replied "I certainly do. I want all the questions and answers of the court to go to the jury intact the way they were asked and answered. The Court: "Without exception?" Mr. O'Shea: "Yes." The Court: "That is satisfactory."

It is difficult to understand the position now assumed by counsel for defendant, after insisting that the testimony should go to the jury without objection or exception. This amounts to a complete waiver of any right to claim error on appeal. Counsel will not be permitted to thus inveigle the court into complying with a specific request for the purpose of using it as a basis for error on appeal.

A single exception was reserved by counsel for defendant to the instructions as given by the court, and this was directed to an unimportant and unobjectionable point. Its total lack of merit seems to have been appreciated by counsel, since it is not discussed in his brief. However, considerable space has been devoted in the brief of counsel in pointing out what is regarded as objectionable features in the instructions. The general rule is that where exception is not taken at the proper time, the court will refuse to consider objections raised for the first time on appeal. Owing, however, to the gravity of the judgment, we have carefully reviewed the charge of the court, and find it to be not only without error but so expressed that no safe-[fol. 183] guard which the law throws around a person accused of crime, for the protection of his rights, was in this instance omitted. The other errors assigned are not of sufficient importance to merit consideration.

The judgment is affirmed.

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Monday, May 7th, A. D. 1923.

[fol. 184]

\* \* \* \* \*

[Title omitted]

#### JUDGMENT

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said Supreme Court in this cause be and the same is hereby affirmed.

Per Mr. Justice Van Orsdel, May 7, 1923.

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[fol. 185] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed July 23, 1923

In the preparation of the transcript of record in the above entitled cause on writ of certiorari to the Supreme Court of The United States the clerk will include the following:

1. Transcript of Record.
2. Argument of Cause.
3. Opinion.

4. Judgment.

5. This Designation.

James A. O'Shea, Attorney for Appellant.

[File endorsement omitted.]

[fol. 186] COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 185, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals as designated by counsel in the case of Ziang Sun Wan, Appellant, vs. The United States of America, No. 3807, April Term, 1923, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 23rd day of July, A. D. 1923.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. [Seal of the Court of Appeals, District of Columbia.]

[fol. 187] WRIT OF CITORARI AND RETURNS—Filed Oct. 25, 1923

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, OCTOBER TERM, 1923

[Title omitted]

Stipulation as to Return

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record now on file in the office of the Clerk of the Supreme Court shall constitute the return of the Clerk of the Court of Appeals of the District of Columbia to the writ of certiorari issued herein.

James A. O'Shea, Charles Fahy, McKenney & Flannery,  
Counsel for Petitioner. James M. Beck, H., Solicitor Gen-  
eral. October 23, 1923.

Endorsed: No. 3807. 'Ziang Sung Wan, Petitioner, vs. United States of America, Respondent. Stipulation as to Return. Court of Appeals. District of Columbia. Filed October 23, 1923. Henry W. Hodges, Clerk.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify, in obedience to the writ of certiorari hereto attached and returned herewith, the foregoing to be a true and correct copy of the stipulation of counsel filed in said cause on the 23rd day of October, A. D. 1923.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, District of Columbia, this 24th day of October, A. D. 1923.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. [Seal of the Court of Appeals, District of Columbia.]

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[fol. 188] UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Appeals of the District of Columbia, Greeting:

Being informed that there is now pending before you a suit in which Ziang Sun Wan is appellant, and The United States of America is appellee, No. 3807, which suit was removed into the said Court of Appeals by virtue of an appeal from the Supreme Court of the District of Columbia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that [fol. 189] you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the seventeenth day of October, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[fol. 190] [File endorsement omitted.]

[fol. 191] [File endorsement omitted.]

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1923.

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No. —.

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ZIANG SUNG WAN, *Petitioner,*

*vs.*

UNITED STATES OF AMERICA, *Respondent.*

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PETITION FOR CERTIORARI TO COURT OF  
APPEALS OF THE DISTRICT OF COLUMBIA.

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TO THE HONORABLE, THE SUPREME COURT OF THE  
UNITED STATES:

Petitioner, Ziang Sung Wan, a citizen of the Republic of China, respectfully submits this petition for a writ of certiorari to be addressed to the Court of Appeals of the District of Columbia to bring before this Honorable Court for its review the transcript of the record in the case of Ziang Sung Wan, Appellant, *vs.* the United States of America, No. 3807, No. 12 Special Calendar, whereby under date of May 7, 1923, the Court of Appeals of the District of Columbia af-

firmed a judgment of the Supreme Court of the District of Columbia adjudging petitioner guilty of murder in the first degree and sentencing him to death by hanging.

Having in view the provisions of Section 3 of Rule 37 of the Rules of Practice of this Honorable Court, petitioner submits the following summary and short statement of the matters necessarily involved in the proper presentation to this Honorable Tribunal of the single question of general character and importance upon which allowance of this petition depends.

Petitioner was indicted by a Grand Jury of the District of Columbia for the wilfull and premeditated murder of one Ben Sen Wu, on the twenty-ninth (29) day of January, 1919 (R., 5). To such indictment petitioner pleaded "not guilty," and of the crime charged here reiterates his entire innocence.

On the trial the prosecutor introduced and there was submitted to the jury under instructions of the trial judge evidence tending to prove that the offices of the Chinese Educational Mission were located in premises known as 2023 Kalorama Road, Northwest, Washington, D. C., and that certain officers of said Mission, including Ben Sen Wu, resided there; that on January 31st, 1919, a caller at the Mission, one Kang Li, getting no response to his ringing of the door bell, lifted a window sash, entered the house, and finding the place in disorder summoned a police officer, and found on further search three dead bodies, including that of Ben Sen Wu (R., p. 42); that on the preceding Wednesday, January 29th, defendant (your petitioner), who was the friend of all the officers of the Mission, and had recently been their guest, had been seen in the Mission House about seven o'clock in



the evening by Kang Li, and in response to inquiry by the latter, had stated that certain of the officers above referred to were not in the house, which was true; that Burlingame and Kelly of the District police force proceeded to New York on the night of January 31st, and about nine o'clock the next morning had found defendant at his home in New York City, in bed suffering with a certain chronic condition of ill health; that defendant was reading a newspaper account of the tragedy at the Mission House, expressed great sorrow at the death of Wu, who was one of his best friends, and at the suggestion of one of the detectives present to the effect that he was needed in Washington to help clear up the situation, defendant promptly agreed to return at once and arrived in Washington in the early evening of the same day (Saturday, Feb. 1, 1919) (R. p. 53); that on arrival with the detectives and Kang Li, he entered an automobile at the railroad station and drove to a building where he was met by Major Pullman, Chief of Police, and Inspector Grant, the Chief of the Detective Force, D. C., and was immediately questioned by them in the presence of Lieutenant Burlingame and Sergeant Kelly, other persons passing into and out of the room from time to time; this continued until about ten thirty or eleven o'clock, when defendant, who was not well, declined the suggestion of Major Pullman that he should go to a hospital, and was taken by the police to the Hotel Dewey, (R. p. 55) where he was kept under police surveillance throughout the following week, being visited and plied with questions almost continuously each day and often at night by both the Chief of Police, the Chief of Detectives and by others, but was not allowed to see or have conversation with his brother who had also come from

New York to Washington and was likewise detained by the police under surveillance in the same hotel, nor was he allowed to communicate with friends or acquaintances nor to seek advice of counsel, nor was any attempt made at any time by any of the officers or others to advise him of his privileges in such regard, but the policemen who were detailed to guard him were quartered in his room, ate meals with him and "had orders not to let any one else see" him (R., 71).

Inspector Grant testified that while at the Dewey Hotel on the following Thursday or Friday (February 6th or 7th), later fixed as Friday, the 7th, in the course of one of the several daily quizzes, defendant was being queried as to an attempt on the part of certain persons to procure the cashing of a bank check, and witness Grant asked defendant "who went to the bank," further saying, "That has nothing to do with the murder; tell me who went to the bank," and defendant replied, "If you get the man who went to the bank, you will get the murderer," to the admission in evidence of which question and answer counsel for defendant promptly objected and moved for its erasure from the record and to the denial of such motion was allowed an exception which was duly preserved of record (R., 72), whereupon Grant told defendant that he knew who was the man who went to the bank, that it was defendant's brother Van, and that Van himself had told witness so (R., 72); on the following Saturday (February 8th) the police took defendant to the scene of the murder, the Mission House (Rec., p. 59) about 7 or 8 o'clock p. m., in company with the Chief of Police, Inspector Grant, Lieutenant Burlingame and Sergeant Kelly; after taking him over the house and pointing out the blood stains, etc., the of-

ficers questioned the petitioner all night and until about 5:30 o'clock Sunday morning (R., p. 68). As illustrative of one method used the following is quoted from the record, p. 68:

"In the room on the third floor early Sunday morning, when Kelly was pressing the defendant for an answer, the reason witness (Burlingame) stated to him, 'Why don't you answer, why don't you tell Mr. Kelly what he wants,' was because defendant had been asked several questions and he was in a rather embarrassing position; if he answered the question he would have to implicate himself and he refused to answer and witness said to him, 'Why don't you answer the question one way or the other or tell Mr. Kelly what he is asking you;' being asked if witness was not trying to force an answer out of him, witness replied, 'You might put it that way;' witness asked defendant, 'Why don't you answer? Answer Mr. Kelly's question.' "

Between ten and eleven o'clock that night, Major Pullman, in the presence of Grant, Burlingame and Kelly exhibited certain of petitioner's handwriting to him and then the stub in the check book of the Mission and they pressed him for an answer as to who wrote that (R., p. 61); Major Pullman said: "Tell me who wrote that;" petitioner finally said, "I think I wrote that," referring to the stub, and the Major said, "I don't want you to tell me what you think; you know whether you wrote it or not" (R., p. 61); when first asked if the stub was in his writing when the Major pressed him for an answer he said "no," looked at it for a while and said, "I think so," and when still further pressed, said he wrote it (R., p. 68). This testimony was admitted over objection and exception

to adverse ruling, duly preserved of record (R., p. 72).

Again on the following Sunday evening at the Mission House witness (Inspector Grant), appealed to the good side of defendant's nature and "asked him several times to tell witness the truth about this thing" and finally said to him, "If you are guilty and your brother is innocent, now is the time to tell it; I want to know," and again appealing "to the better side of his nature," told defendant "that things looked pretty black (or bad) for him," that developments showed "that he (defendant) knew more about the crime than he was telling," and "asked him to tell the truth," saying "the investigation so far looks pretty black for you; tell me the truth," and told him (defendant) a lot of things, but never offered any inducement, because witness (Grant) "has had too much experience in that line." "Q. And this was what you meant by saying that you appealed to the better side of his nature—by telling him that the investigation looked awfully black and that he had better tell you the truth? A. Yes; I thought if he told the truth about it, it would be the proper thing for him to do under the circumstances" (R., p. 73). At page 81 of the Record, referring to the same incident, Grant said he wanted to get some talk out of him which would fasten the crime on him, wanted to clear up the crime, told him, "we are all firmly of the belief that you know who killed those men," sat and watched him and looked at him carefully and for a long time after he would tell him those things and would say, "Now, you think it over," and stayed right there with him. "Q. Your purpose in telling him those things was to make him talk? A. My purpose was to get him to tell me the truth about this case. Q. Answer the ques-

tion, will you? A. Well, he had to talk;" told him "certain things," how far we had gone with the case, saying, "You know we have been at this thing a long time, Wan, and I am tired if you are not," said there were certain things that pointed directly to him, and told him, "if you did not kill these people, then I want you to tell me who did," told him "things look black for you, . . . If you are guilty and your brother is innocent, I want to know, for I am holding your brother, just the same as I am holding you." Witness thinks he said, "now is the time to tell me," intimating to him that he had been in confinement a long time and witness wanted to know something about it;" said to him, "things look bad for you," and "you ought to tell me the truth" (R., p. 82-3). Then it was that petitioner made the statement that he saw all three killed, but did not take any part in it; that a man named Chen had killed Wu, after Wu had killed Dr. Wong and Mr. Hsie (R., pp. 74, 83).

To the admission of all of the above in evidence, counsel for the defendant strenuously objected on the ground that any statement made by the defendant under such circumstances was involuntary and inadmissible in evidence, and such objection having been overruled by the Court, exception to the Court's action was promptly taken and preserved of record (p. 74).

The following morning defendant was taken from the station house and again escorted to the Mission House, and, after petitioner had been forced and induced to involve himself, Burlingame said to him, "Wan, you know how this happened; you put a man by the name of Chen in it; I know there was no Chen; you are the man that you are placing here in the story as Chen"; that defendant thought a min-

ute and said there was no Chen in it ( R., p. 62); Grant, however, says Burlingame said, "Tell us where Chen was," and Grant put his foot on Burlingame, looked defendant in the face and said, "there was no Chen here, was there? Tell me what you did" (R., p. 74). "You know there is no Chen in this; you are just putting Chen in your place; tell us now what you did;" he hung his head and Grant said, "Come on, Wan, now tell us," put his hand to his chin, patted him on the shoulder, and "He told us he had killed Wu after Wu had killed Wong and Hsie" (R., p. 83). During this time Detective Burlingame made notes and asked questions. To this testimony and the admission of same in evidence, counsel for defendant objected and moved that it be stricken out on the grounds above stated, and to the denial of such objections and motion, defendant was allowed an exception which was preserved of record (R., p. 74).

The next morning, that is, Tuesday, February the 11th, various questions were submitted to the defendant, mostly by Detective Burlingame, in the presence of a stenographer, who reported the interview stenographically. For purposes of this interview, the defendant was roused "out of the bed and sat on the side of the bed" (Detective Kelly, R., 98). This interview was "To get the statement in writing, as he had given the day before." (R. p. 63.)

The questions and answers constituting the so-called signed confession of the defendant which was admitted in evidence over the objection and exception thereto noted by the defendant is found on pages 99 to 110 and is not reproduced here at length because of the fact that same in original form is readily accessible in the printed transcript of the record and of peti-



tioner's desire not unnecessarily to extend the length of this petition.

Petitioner's objections to the admission in evidence against him in the course of the trial of the various statements of witnesses for the prosecution as above set forth and all objections thereto and exceptions to the rulings of the learned trial court as to the admissibility thereof were founded in law upon rules of evidence and trial procedure which should govern and control the admission of evidence against one accused and on trial in a Federal Court for a capital offense, defined and declared by this Honorable Court in its comprehensive and enlightening opinion in the case of *Bram vs. United States*, 168 U. S. 532, in which this Honorable Court held, at 542, that,

"In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment to the Constitution of the United States, commanding that no person 'shall be compelled in any criminal case to be a witness against himself.' "

The opinion of this Court in the *Bram* case has never been departed from, even to the extent of modifying any one of the important principles therein expounded.

Although the opinion of this Court in the *Bram* case was repeatedly referred to and at great length quoted from in the course of argument on appeal before the learned Court of Appeals of the District of Columbia that learned tribunal seemingly thought it unnecessary to advert to petitioner's arguments based thereon, and in affirming the judgment of the Supreme Court of the District of Columbia, sentencing defendant to death by hanging, contented itself with pointing out the views

of other courts, as well as its own, as to the differences in definitions of "confessions," "admissions" from which guilt might be logically inferred, and "casual observations" which "an innocent bystander might logically have made," and referred to *Bram vs. United States*, 168 U. S. 532, only in passing and as approving the rule as to the admissibility of confessions stated in 3 *Russell on Crimes* (6th Ed) 478, as follows:

"But a confession, in order to be admissible, must be free and voluntary: that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence. . . . A confession can never be received in evidence where the prisoner has been influenced by any threat or promise; for the law cannot measure the force of the influence used, or decide upon its effect upon the mind of the prisoner, and therefore excludes the declaration if any degree of influence has been exerted."

and in its comment upon such rule as follows:

"In all cases, however, the confession must have been induced by the excitation of hope or fear arising from an actual threat or promise made by a person in authority. *Hardy vs. United States*, 3 App. D. C. 35, 46. Or as concisely summarized in the *Bram* case 'it must necessarily have been the result of either hope or fear, or both, operating on the mind.' . . . The crucial test to be applied in determining whether or not a confession is voluntarily or involuntarily made, depends upon its truth or falsity. As was said by

<sup>1</sup> In passing it may be noted that the expression quoted from the *Bram* case, "It must necessarily have been the result of either hope or fear, or both, operating on the mind" when examined in its context appears to be the conclusion of this Court from the specific facts of the *Bram* case and not as might be inferred from the language of the learned Court of Appeals, a statement of a general principle. See *Bram vs. U. S.* 168 U. S. 532 at 562.

the court in *Commonwealth vs. Dillon*, 4 Dall. 115, 117: 'If such declarations are voluntarily made, all the world will agree, that they furnish the strongest evidence of imputed guilt. The hope of mercy actuates almost every criminal who confesses his crime; and merely that he cherishes the hope is no reason, in morality, nor in law, to disbelieve him. The true point for consideration, therefore, is whether the prisoner has falsely declared himself guilty of a capital offense? If there is ground even to suspect, that he has done so, God forbid, that his life should be the sacrifice.' "

"Applying this rule, the present confession accords with every reasonable theory of guilt. All the circumstances in the case corroborate it. Therefore, its admissibility, as competent evidence for the consideration of the jury, is supported by every principle of law. Certainly the evidence tending to show that it was involuntarily made was not so conclusive as to justify the court in excluding the confession from the jury. It was submitted properly, as an issue in the case, and the jury found that it was voluntarily made. This conclusion is amply supported by the evidence in the case."

There were no eye witnesses to the crime of which your petitioner has been convicted and the evidence against him aside from the confessions heretofore referred to is purely circumstantial.

Petitioner respectfully represents that in standing trial for the alleged commission of a capital offense, of which he is innocent in fact, he is guaranteed by the fundamental law of the land a fair and impartial trial and is subject to be convicted, if unhappily such should be his fate, only after having been accorded "due process" of law in its application according to principles and formulae enunciated by courts of con-

trolling influence, that is, in the instant case, as enunciated by this Honorable Court in the course of its opinion in the case of *Joram vs. United States*, above cited.

That this case is of importance is demonstrated by the fact that in and by the judgment complained of and to be brought under review, human life has been declared as forfeit. That its correct decision is of great and widespread public interest, and essential to the certain and general administration of justice in Courts of the United States is sufficiently and plainly apparent from the statement made and the failure on part of the final appellate tribunal, sitting in the District of Columbia to accept as binding authority the opposite pronouncements of this, the tribunal of final appeal in matters of Federal cognizance, sitting in all these United States.

Again, in the interest of uniformity and clarity of decision in matters of such prime importance as the admission of evidence tending to conviction in capital cases in Courts of the United States, it is respectfully submitted that this petition for certiorari should be granted.

ZIANG SUNG WAN,  
*Petitioner.*

DISTRICT OF COLUMBIA, SS:

I, ZIANG SUNG WAN, being first duly sworn on the Evangelists of Almighty God, do say that I have read the foregoing petition of certiorari and know well the contents thereof, and on my oath do say that the statements of facts therein contained having to do with any supposed connection on my part with the crime charged are true.

Sworn to and subscribed before the this — day of  
July A. D. 1923.

.....,  
*Notary Public.*

## BRIEF IN SUPPORT OF PETITION.

The most important question in this case before the Court of Appeals of the District of Columbia, and the only question before this Honorable Court is as to the admissibility in evidence of various statements made by petitioner which were admitted over his objection in the trial, exceptions being duly noted and error assigned on the ground that they were each and all confessions shown by Government's witness to be involuntarily made. These statements will be discussed in the order in which they appear in the record under two general heads,—*First*, were they "confessions," and *Second* were they voluntarily made?

I. *Petitioner's Statements Were "Confessions."*

The opinion of the learned Court of Appeals in sustaining the ruling of the trial court in admitting the statements in question raises *in limine* the fundamental issue, what is a "confession"? Is an exculpatory statement or any statement not intended as a direct admission of guilt a confession and therefore to be excluded unless voluntarily made? The Government strenuously contended in the Court of Appeals for the negative of this proposition; that is to say, that only a direct admission of guilt is a confession, and the Court of Appeals sustained this contention.

(1) *Statement Friday, February 7th, at the Dewey Hotel "who is the man who went to the bank; who is the murderer."*

The first statement raising this issue was made on Friday afternoon, February 7th, after the defendant, ill, *incommunicado*, "in a foreign land" (to use the

language of this Honorable Court in the Bram case, Bram v. U. S., 168 U. S., at p. 563) had withstood long continued, pertinacious and harassing examinations by the police officials for an entire week. Then, in the course of one of these examinations, the following took place as stated by the learned Court of Appeals in its opinion:

"An officer testified that while defendant was at the hotel he was being questioned by the witness respecting the taking of the check to the bank. The officer asked him who went to the bank, suggesting 'that has nothing to do with the murder, tell me who went to the bank;' and the defendant said 'Mr. Grant, after what you said, who is the man who went to the bank; who is the murderer?'"

This statement was admitted over defendant's motion to strike and exception duly noted, on the ground that it was not shown to have been voluntarily made. The learned Court of Appeals held that there was no merit in the defendant's assignment of error, not on the ground that the statement was in truth voluntary, but on the ground that it was not a "confession." The opinion of the Court of Appeals on this point reads as follows:

"Counsel seems to have regarded the statement as a confession. It was not even an admission of defendant's connection with the transaction. It was a mere casual observation which an innocent bystander might logically have made. At the stage of the investigation when the statement was made, it had no more significance, coming from guilty lips, than if it had been innocently uttered. It only became a significant circumstance, when in his confession defendant subsequently admitted that he



and his brother took the check to the bank, and his further statement in the confession that the forgery of the check was directly associated with the commission of the murder."

It is submitted with all deference that this is not the law as laid down by this Honorable Court. From the point of view of the detective to whom this statement was made, who knew that petitioner's brother had gone to the bank and doubtless believed that petitioner had accompanied him, petitioner himself was "the man who went to the bank," and the statement was offered by the Government to prove out of petitioner's own mouth that he was the murderer. From the point of view of the petitioner on the other hand, the statement may be regarded as exculpatory as tending to shift suspicion from himself to "the man who went to the bank." The petitioner had at that time not admitted that he went to the bank. Petitioner afterwards in the course of further confessions, the admissibility of which is also disputed, admitted having gone to the bank, but he repudiated this admission along with the rest of the confessions and testified at his trial that he did not go to the bank. But whether petitioner's statement was on its face incriminatory or exculpatory, in either case it might in the light of all the circumstances tend to implicate him in the commission of the crime charged, and on that theory was offered in evidence by the Government and admitted by the Court over petitioner's objection, and it is now too late to justify its admission as "a casual observation."

In the *Bram* case this Court, dealing with statements on their face exculpatory, but offered "because of an implication of guilt" (168 U. S. at 562) namely, a

statement made by Bram that one Brown "could not have seen me; where was he?" and again, the statement, "well I think and many others on board the ship think that Brown is the murderer," held these statements to be confessions and subject to the rules of exclusion applying thereto. The opinion of the Court on this point, handed down by the late Chief Justice White, then Associate Justice, is as follows:

"The principle on the subject is thus stated in a note to section 219 of Greenleaf on Evidence: 'The rule excludes not only direct confessions, but any other declaration tending to implicate the prisoner in the crime charged, even though, in terms, it is an accusation of another, or a refusal to confess. *Rev v. Tyler*, 1 C. & P. 129; *Rex v. Enoch*, 5 C. & P. 539. See further as to the object of the rule, *Rex v. Court*, 7 C. & P. 486 per Little-dale, J.; *People v. Ward*, 15 Wend. 231.' Nor from the fact that in *Wilson v. United States*, 162 U. S. 613, mention was made of the circumstance that the statement of the accused was a mere denial of guilt accompanied with exculpatory explanations, does the decision in that case conflict with the principle we have just stated. The ruling there made that error to the prejudice of the accused did not arise from the admission of the statement there considered, was based not alone upon the nature of the statement but upon 'the evidence of its voluntary character; the absence of any threat, compulsion or inducement; or assertion or indication of fear; or even of such influence as the administration of an oath has been supposed to exert.' (p. 624).

"The contradiction involved in the assertion that the statement of an accused tended to prove guilt, and therefore was admissible, and then after procuring its admission claiming that it did not tend to prove guilt, and could not, therefore, have

been prejudicial, has been well stated by the Supreme Court of North Carolina, *State v. Rorie*, (1876) 74 N. C. 148:

“ ‘But the State says this was a denial of guilt and not a confession. It was a declaration which the State used to procure a conviction; and it is not for the State to say that the declaration did not prejudice the prisoner’s case. Why introduce it at all unless it was to lay a foundation for the prosecution? The use which was made of the prisoner’s statement precluded the State from saying that it was not used to his prejudice.’ (p. 150)” (*Bram v. United States* 168 U. S. 532 at 541, 542.)

(2) *Alleged statement Saturday night February 8th, at the Mission House, that petitioner wrote the \$5,000.00 check stub.*

The next day, Saturday, February the 8th, the police officers took the petitioner to the Mission House where the murder had been committed and kept him up all night, going over the details of the crime as they had worked them out and ceaselessly questioning him in relays from 7:30 p. m., to 5:00 a. m. During the course of this questioning, petitioner, according to the testimony of the officers, admitted that the entry on the check stub in the check book of the Educational Mission “T. T. Wong, \$5,000” was in his hand-writing. Petitioner on the stand denied making this statement, saying that he merely said it looked like his hand-writing. The admission of this statement was assigned as error but the Court of Appeals holds:

“As to the alleged admission respecting the hand-writing, it does not come within the category of a confession, since it is admitted by the defendant in a signed confession, testified to by the offi-

cers and denied by defendant on the witness stand. Hence it is reduced to a mere fact or piece of competent evidence upon which there was a conflict in the testimony, and which was properly submitted to the jury for its consideration."

In passing, it is earnestly submitted that if this statement was inadmissible as a matter of law as a confession involuntarily made, it could not have become admissible because the defendant later denied making it; (*West v. U. S.*, 20 App. D. C., 347, at p. 352). But the present point is that the Court of Appeals holds it admissible because it was not a confession, for the learned Court proceeds:

"The term confession has no application to a mere admission or statement of an independent fact from which guilt may be inferred; or even to incriminating acts. *State vs. Campbell*, 73 Kans. 688; *Rusher v. State*, 94 Ga. 363. In other words, an admission not of guilt, but tending merely, in connection with other facts, to establish guilt, does not amount to a confession. *McGehee vs. State*, 171 Ala. 19, 21; *People vs. Jan John*, 144 Cal. 284; *State v. Willis*, 71 Conn. 293; 2 *Wigmore on Evidence*, sec. 1050."

"A confession is a declaration made by a person charged with crime acknowledging his participation in its commission."

It is submitted with all deference that here again is a plain departure from the rule in the *Bram* case which excludes "not only direct confessions but any other declaration tending to implicate the prisoner in the crime charged." Certainly if the petitioner said that he wrote the entry on the check stub this had some tendency to implicate him in the crime charged and it was admitted on this theory. The weight of the evi-

dence is immaterial. As this Honorable Court said in the Bram case:

"It is manifest that the sole ground upon which the proof of the conversation was tendered was that it was a confession, and this was the only conceivable hypothesis upon which it could have been legally admitted to the jury. It is also clear that in determining whether the proper foundation was laid for its admission, we are not concerned with how far the confession tended to prove guilt. Having been offered as a confession and being admissible only because of that fact, a consideration of the measure of proof which resulted from it does not arise in determining its admissibility. If found to have been illegally admitted, reversible error will result, since the prosecution cannot on the one hand offer evidence to prove guilt, and which by the very offer is vouched for as tending to that end, and on the other hand for the purpose of avoiding the consequences of the error, caused by its wrongful admission, be heard to assert that the matter offered as a confession was not prejudicial because it did not tend to prove guilt."

(3) *Statement Sunday February 9th at the Precinct Station that Petitioner was present at the scene of the crime and saw one Chen kill the other men.*

The assignment of error in regard to the admission of this vitally incriminating statement is not specifically dealt with by the learned Court of Appeals in the course of its opinion. The Government in its brief argued that it was not a confession, but "at most only an admission against interest" relying on 2 Wigmore Evidence, Section 1051. The learned author in that section of his work as well as in Section 821 with which it is cross-referenced does indeed support the proposition for which he is cited, but after stating with

approval the doctrine contended for by the Government, the latter section proceeds to show that it is not the law in the Federal Courts. Professor Wigmore says:

"In the Federal Supreme Court this doctrine is ignored: 1896 *Wilson vs. U. S.*, 162 U. S. 613, 621, 16 Sup. 895 (here exculpatory assertions were admitted, yet after a discussion of the principles of confession): 1896 *Bram vs. U. S.*, 168 Id. 532, 18 Sup. 183 (a statement in which the defendant exculpated himself by asserting that a witness B. could not have seen the defendant do the act, and that he thought the witness B. did it, excluded as a confession; this *Bram* case, in this as in other respects, reached the height of absurdity in misapplication of the law)." (Section 821 footnote.)

It is respectfully submitted that the Government's authority proves too much.

Exercising the freedom from constraint and from control which commentators on judicial decisions enjoy but which is denied to inferior courts in our system of jurisprudence, Professor Wigmore hesitates not at all to stamp his lively disapproval upon the views expressed *arguendo* and the conclusions announced by this august tribunal in the opinion in the *Bram* Case, saying as above quoted, "this *Bram* case, in this as in other respects, reached the height of absurdity in misapplication of the law."

The learned Court of Appeals, restrained by its sense of judicial propriety, has refrained from criticism or comment, but none the less it would seem in silence to have disregarded, not to say ignored, the authoritatively declared principles of law upon which petitioner relied for his defense against illegal con-



viction. That the principles of decision in Bram's case were both pertinent and applicable in the highest degree to the facts of the instant case cannot be denied or even gainsaid.

If those principles in fact reach heights of "absurdity in misapplication of the law," which we deny, courts throughout the United States should be so advised, and that can be done authoritatively only by this Court itself.

If those principles are and remain the just expression of the best thought and judgment of this Court, of final earthly resort, then the petitioner and his trial counsel charged with his defense in matters of law, were and still yet are entitled to rely upon them, and both the trial and appellate courts should have yielded ready submission to their existing expression.

Anything less than this would be to substitute untrammelled individual view for controlling judicial precedent, and to effect conviction of one charged with a capital offense otherwise than in accordance with law. In such a scheme of things, passion and prejudice would run unrestrained and the Constitutional provision in favor of liberty and life and the prohibition against self-incrimination and being compelled to give evidence against one's self would degenerate into an empty phrase.

(4) *Oral statement of petitioner Monday, February 10th at the Mission House.*

(5) *Written statement of petitioner dictated Tuesday, February 11th, signed Wednesday, February 12th.*

It is conceded that these two statements are confessions and therefore their admissibility depends upon whether they were voluntarily made.

It is respectfully submitted that the opinions and judgments of this Honorable Court in United States vs. Wilson, 162 U. S. 613, and United States vs. Bram, 168 U. S. 532, conclusively establish that petitioner's statements and alleged statements were confessions under the federal rule, and that the decision of the learned Court of Appeals of the District of Columbia in the instant case squarely and openly departs from the rule established by this Honorable Tribunal.

## II. *Petitioner's Confessions Were Not Voluntary.*

In considering this question as to each and all of the several confessions made, the Court is respectfully requested to consider *first*, the petitioner's situation as disclosed in the barest outline in the statement of facts set forth in the petition and this brief and abundantly shown by the record, and *second*, the specific representations from time to time made to the petitioner by the police officers. It is submitted that in the light of the general situation and the remorseless and accusatory questioning of the police officers, each and every one of the confessions made is inadmissible under the doctrine of the Bram case, quite irrespective of any specific promise or threat held out to petitioner by the police officers. Petitioner's situation: sick, alone, a stranger in a strange land, held *incommunicado* and ceaselessly accused and questioned, compelled him to talk and in and of itself rendered any and every confession which he made involuntary.

(A) *Petitioner's General Situation Rendered His Confessions Involuntary.*

1. *Petitioner Was Not a Free Agent.*

In the Bram case (at p. 561), this Honorable Tribunal states the general situation of the defendant as follows:

"Before analyzing the statement of the police detective as to what took place between himself and the accused it is necessary to recall the exact situation. The crime had been committed on the high seas. Brown, immediately after the homicide, had been arrested by the crew in consequence of suspicion aroused against him, and had been by them placed in irons. As the vessel came in sight of land, and was approaching Halifax, the suspicions of the crew having been also directed to Bram, he was arrested by them and placed in irons. On reaching port, these two suspected persons were delivered to the custody of the police authorities of Halifax and were there held in confinement awaiting the action of the United States consul, which was to determine whether the suspicions which had caused the arrest justified the sending of one or both of the prisoners into the United States for formal charge and trial. Before this examination had taken place the police detective caused Bram to be brought from jail to his private office, and when there alone with the detective *he was stripped of his clothing*, and either whilst the detective was in the act of so stripping him, or after he was denuded, the conversation offered as a confession took place. The detective repeats what he said to the prisoner, whom he had thus stripped, as follows:"

and again, on page 563:

"And these self-evident deductions are greatly strengthened by considering the place where the

statements were made and the conduct of the detective towards the accused. Bram had been brought from confinement to the office of the detective, and there, when alone with him, in a foreign land, while he was in the act of being stripped or had been stripped of his clothing, was interrogated by the officer, who was thus, while putting the questions and receiving answers thereto, exercising complete authority and control over the person he was interrogating. Although these facts may not, when isolated each from the other, be sufficient to warrant the inference that an influence compelling a statement had been exerted, yet when taken as a whole, in conjunction with the nature of the communication made, they give room to the strongest inference that the statements of Bram were not made by one who in law could be considered a free agent."

If Bram were not a free agent under the above circumstances, can there be any doubt that the petitioner was not a free agent, situated as he was? Bram, as far as is disclosed by the record, was a well man, examined for a few moments alone by a police officer "in a foreign land" to be sure, for it was at Halifax, but among people enjoying the same "language, institutions and laws." Petitioner is of an alien race as well as foreign nationality and English is to him a foreign tongue with which at that time he was only imperfectly acquainted (R., p. 86). Can the mere fact that Bram was for a few moments stripped of his clothing (the only circumstance of hardship in his case which is not found in the instant case) outweigh in its moral effect petitioner's detention by the police, for more than ten days and nights, always under the immediate surveillance of a police officer in uniform, eating and sleeping when permitted to sleep only in such presence, sub-

jected to repeated questionings and accusatory suggestions by the higher police officials, suffering always with a chronic illness, and the weakness resulting therefrom, which, according to Dr. James A. Gannon of the Hospital Staff of the Jail, induced "great fatigue plus great pain," so that the petitioner was so exhausted that "he would really do anything to have the torture stopped" (R., pp. 147, 148).

(2) *Petitioner "Had to Talk."*

Another vital element in petitioner's general situation was the ceaseless accusatory questioning infinitely greater in degree than that in the Bram case which it is submitted in accordance with the rule laid down in the Bram case renders inadmissible all the confessions obtained in this case. Inspector Grant testified:

"I wanted to straighten out a great many circumstances which pointed to him"; witness being asked if he wanted to get some talk out of him which would fasten the crime on him, answers: "I wanted to clear up this crime, yes, sir";  
 • • • wanted to know from him whether he was guilty. Wanted him to tell the truth; • • • witness said, "We are all firmly of the belief that you know who killed those men"; sat and watched him and looked at him carefully and for a long time after I would tell him those things and would say, "Now, you think it over," and stayed right there with him.

"Q. Your purpose in telling him those things was to make him talk?

"A. My purpose was to get him to tell me the truth about this case.

"Q. Answer the question, will you?

"A. Well he had to talk." (R. 81-82.)

For a similar illustrative extract from the record showing the compulsion to which petitioner was subjected, see *Petition, ante*, p. 5.

The corresponding facts in the *Bram* case are stated in the opinion of this Honorable Court:

"When Mr. Bram came into my office, I said to him: 'Bram, we are trying to unravel this horrible mystery.' I said: 'Your position is rather an awkward one. I have had Brown in this office and he made a statement that he saw you do the murder.' He said: 'He could not have seen me; where was he?' I said: 'He states he was at the wheel.' 'Well,' he said, 'he could not see me from there.' " (p. 562.)

And this Court comments thereon as follows:

"\* \* \* But the situation of the accused, and the nature of the communication made to him by the detective, necessarily overthrews any possible implication that his reply to the detective could have been the result of a purely voluntary mental action; that is to say, when all the surrounding circumstances are considered in their true relations, not only is the claim that the statement was voluntary overthrown, but the impression is irresistibly produced that it must necessarily have been the result of either hope or fear, or both, operating on the mind.

"It cannot be doubted that, placed in the position in which the accused was when the statement was made to him that the other suspected person had charged him with crime, the result was to produce upon his mind the fear that if he remained silent it would be considered an admission of guilt, and therefore render certain his being committed for trial as the guilty person, and it can-



not be conceived that the converse impression would not also have naturally arisen, that by denying there was hope of removing the suspicion from himself. If this must have been the state of mind of one situated as was the prisoner when the confession was made, how in reason can it be said that the answer which he gave and which was required by the situation was wholly voluntary and in no manner influenced by the force of hope or fear? To so conclude would be to deny the necessary relation of cause and effect. Indeed, the implication of guilt resulting from silence has been considered by some state courts of last resort, in decided cases, to which we have already made reference, as so cogent that they have held that where a person is accused of guilt, under circumstances which call upon him to make denial, the fact of his silence is competent evidence as tending to establish guilt. Whilst it must not be considered that by referring to these authorities we approve them, it is yet manifest that if learned judges have deduced the conclusion that silence is so weighty as to create an inference of guilt, it cannot, with justice, be said that the mind of one who is held in custody under suspicion of having committed a crime, would not be impelled to say something, when informed by one in authority that a co-suspect had declared that he had seen the person to whom the officer was addressing himself, commit the offence, when otherwise he might have remained silent but for fear of the consequences which might ensue; that is to say, he would be impelled to speak either for fear that his failure to make answer would be considered against him, or of hope that if he did reply he would be benefited thereby" (pp. 562-3).

Like Bram, but in a much greater degree than Bram, petitioner "had to talk." It was not "left to the

prisoner a matter of perfect indifference whether he should open his mouth or not" (Reg. v. Baldry 1852, 2 Den. C. C. 430 at 442 quoted with approval in United States vs. Bram, 168 U. S. 532 at 554), and it is respectfully submitted that to conclude that the confessions which were thus extracted from him "were wholly voluntary and in no manner influenced by the force of hope or fear" would, in the language of this Honorable Court in the Bram Case "be to deny the necessary relation of cause and effect" (168 U. S. 563).

*3. These general considerations apply to all the confessions.*

If it be suggested, as in the Government's brief below, that even if the earlier confessions were excluded as involuntary, still the written confession signed on February 12th was voluntary and sufficient to convict, it is submitted that the answer is two fold: First, there was one general situation existing with a cumulative effect; and second, it is impossible to tell the weight attached by the jury to the various confessions.

First, during the six days of questioning ending Thursday, February 6th, petitioner had withstood all efforts to force a confession as to a crime of which he repeatedly maintained his innocence; on Friday, February 7th, the first confession, in regard to the man who went to the bank, was obtained in the manner already outlined; this was used as a wedge the following night, Saturday, February 8th, at the Mission House, to drag from the ill petitioner in the course of the all-night coercion, the alleged confession in regard to the handwriting on the check stub (R., pp. 89-90); the next evening, Sunday, February 9th, in his cell at the Precinct Station, responding to the threats, inducements and promises of Grant, and real-

izing therefrom and from the unremitting efforts of the police for the past eight days, the hopelessness of surcease unless he implicated himself, he confessed, in direct response to Grant's specific statements, that he was present at the killing, and even then, fighting still to obtain a way out, said Chen did it; the next morning, Monday, February 10th, having again been taken to the Mission House, still confronted with questioning officers, accused point blank of having put Chen in his own place, and thus impelled by the inference of guilt resulting from silence referred to in the Bram case to make a further statement, the influence of the previous days being thus continued, pushing him back from point to point, wholly and indisputably against his own volition, and being already involved by the confession obtained on Sunday, he confessed that he killed Wu, and explained in answer to questions how it was done based upon the suggestions of the officers and the continuous "rehashing" of the case. The full confession, which the police had determined to extort from him had then and in such manner been obtained, and the next morning, Tuesday, the 11th, at the police station, it was merely reduced to question and answer form, stenographically recorded, "as he had given it the day before" (R., p. 63); on Wednesday, Feb. 12th, at the jail, the defendant not being well enough to read it, the confession was read to him, and he said it was "practically his story" (R., p. 63), and signed it. The next day Dr. Gannon found him worn and emaciated in his cell, and ordered him removed to the Red Cross room. It is clear that the last two steps of this continuous campaign, that is, the reducing to writing and signing, were not necessary for the purposes of the police, and were resorted to merely

to facilitate the proof on the trial. It is equally clear that all the confessions were the result of the efforts and suggestions of the police officials. Their influence was never removed, and in the nature of things the longer it continued the weaker the resistance became until at the end the petitioner was helpless. There can be no question, as a matter of law, that when once an improper influence has been exerted with the view and for the purpose of inducing or extorting a confession it must be shown to have been removed before any subsequent confession may be said to be voluntary.

Second, all the separate confessions having been offered before the jury as material evidence to secure a conviction, and being admissible only on that theory, if any one of them was involuntary, prejudicial error resulted from its admission. To illustrate this, the jury were entitled to believe the statement of petitioner made on the witness stand where (R., p. 142), in reply to the court's suggestion before the jury that he had so signed his death warrant, that he had signed it not because it was true but because he would let them, the police, go ahead and find out if it was true, indicating his belief that the statements in the confession had to be proved to be true by independent evidence; thus the jury on this one ground may have disregarded the written confession, even if it could by any possibility be said to be voluntary, and on the further ground that it was contradicted in various respects by the physical facts in the record; yet they had the right to convict him because of any one, or more, of the oral confessions. On what evidence the jury based its conviction, no one can say.

*(B) Specific Statements Implying Threats or Promises were made to Petitioner by Persons in Authority.*

It is now desired to direct the attention of this Tribunal to certain considerations growing out of specific statements made to petitioner on the all-important occasion in the police station late Sunday afternoon after petitioner had been charged with murder. This is the occasion as to which Inspector Grant was able, particularly on his cross-examination, to throw the most light upon the methods by which the prisoner's confession was obtained. Being asked similar questions in regard to another occasion, he responded, "It is one of the hardest things for me to do, to remember these conversations" (R., p. 76). On the occasion in question, Inspector Grant testifies that he saw the petitioner about 6 or 7 o'clock in the evening, this being the day after the all-night questioning at the Mission House. Grant, Burlingame and Kelly, all detectives, and a Chinese named K. S. Wang were there, and "there is where this man said that he wanted to tell his story and he told me about seeing all three of these men killed" (R., p. 72). "Sunday evening at the Mission House witness was appealing to the good side of his nature; asked him several times to tell the witness the truth about this thing; finally said to him, 'If you are guilty and your brother is innocent, now is the time to tell it; I want to know;' then it was he admitted seeing all three men killed; his brother was then in a cell in the back part of the building. \* \* \* Appealed to the better side of his nature; 'told him that things looked pretty black for him, that we had talked this thing over and the developments showed me that he knew more about the crime than he was telling, and I asked him for the truth;' told him

'the investigation so far looks pretty black for you; tell me the truth; \* \* \* went over practically and rehashed all the case as far as they had learned about it and related all the circumstances against him; told him a lot of things, but never offered any inducement, because witness had too much experience in that line.'

Q. And this was what you meant by saying that you appealed to the better side of his nature—by telling him that the investigation looked awfully black and *that he had better tell you the truth?* A. Yes; I thought if he told the truth about it, it would be the proper thing for him to do under the circumstances' ” (73).

In support of the general proposition that these appeals to the petitioner's better nature, under the circumstances, rendered the petitioner's confessions thereby obtained inadmissible, the following passage of this Honorable Tribunal in its decision in the Bram case is invoked:

“What further was said by the detective? ‘Now, look here, Bram, I am satisfied that you killed the captain from all I have heard from Mr. Brown. But,’ I said, ‘some of us here think you could not have done all that crime alone. If you had an accomplice, you should say so, and not have the blame of this horrible crime on your own shoulders.’ But how could the weight of the whole crime be removed from the shoulders of the prisoner as a consequence of his speaking, unless benefit as to the crime and its punishment was to arise from his speaking? Conceding that, closely analyzed, the hope of benefit which the conversation suggested was that of the removal from the conscience of the prisoner of the merely moral weight resulting from concealment, and therefore would not be an inducement, we are to consider the import of the conversation, not from a mere



abstract point of view, but by the light of the impression that it was calculated to produce on the mind of the accused, situated as he was at the time the conversation took place. Thus viewed, the weight to be removed by speaking naturally imported a suggestion of some benefit as to the crime and its punishment as arising from making a statement" (pp. 564-5).

But without resorting to these general considerations, it is submitted that the language above quoted includes at least two specific statements, one of which renders the resulting confession inadmissible under almost all the authorities and the other renders it inadmissible according to the holdings of most courts, including this Honorable Tribunal.

Reference is made first to the statement:

"If you are guilty and your brother is innocent, now is the time to tell it. I want to know."

Short of an absolute and direct promise or threat, how could a promise or a threat by a person in authority be more clearly implied than by this statement under the circumstances in which it was made. The other is Inspector Grant's admission under cross-examination that he told Petitioner he had better tell the truth:

"And this is what you meant by saying . . . that he *had better tell you the truth?*"

"Yes, I thought if he told the truth about it it would be the proper thing for him to do under the circumstances."

The Government contends in its brief below (p. 32) that the record does not show that Grant said that it was "better" for petitioner to tell the truth; merely

that he told him "to tell the truth." But it is submitted that Inspector Grant's examination and cross-examination on this point taken in their entirety show that both technically and substantially Grant admitted that he told petitioner that it was "better to tell the truth." The Government's brief inveighs against the supposed "talismanic effect" (p. 19) of these words, and submits, "in the face of authority" (p. 19) that they are insufficient to exclude the confession which follows. The Government frankly admits, however, that

"apparently this Court (i. e. the Court of Appeals of the District of Columbia) in *West vs. United States*, 20. App. D. C., has held that these words alone were sufficient to render a confession inadmissible."

Not only is this admission fully borne out by the *West* case, but it is further true that the Court of Appeals, in the *West* case, reluctantly yielded the view which it had previously expressed in *Hardy vs. United States*, 3 App. D. C., 35, decided in 1893 (where it held that the promise, "we would see what we could do for him" did not render a confession involuntary), because, as it frankly said, it was "constrained by the authority of the Supreme Court of the United States in the case of *Bram vs. The United States*" (*West vs. U. S.*, 20 App. D. C., 347, at 351).

The pertinent passage of the opinion of the Court of Appeals in the *West* case reads in full as follows:

"We are constrained by the authority of the Supreme Court of the United States in the case of *Bram vs. United States*, 168 U. S., 532, to hold that the confession here was involuntary, and

should not have been admitted in evidence. In various cases therein cited with approval and sustained by the majority of the court as stating the correct doctrine on the subject, the words used by the officers of the law to the prisoners in their custody to superinduce a confession were almost identical with those employed in this case. In *Rex vs. Griffin*, Russ. & Ryl. 151, they were, 'It will be better for you to confess,' in *Rex vs. Kingston*, 4 Car. & P. 387, 'You are under suspicion and you had better tell all you know;' in *Rex vs. Garner*, 1 Dec. C. C., 329, 'It will be better for you to speak out;' in *People vs. Barrie*, 49 Cal., 342, 'It will be better for you to make a full disclosure;' in *People vs. Wolcott*, 51 Mich., 612, 'It will be better for you to confess;' in *Commonwealth vs. Myers*, 160 Mass., 530, 'You had better tell the truth;' in *Vaughan vs. Commonwealth*, 17 Gratt., 575, 'You had as well tell all about it.' Some of these words of exhortation to a confession would seem to have been innocent enough; and yet they were each and all of them held sufficient to vitiate the confessions made in pursuance of them, and to relegate such confessions to the category of confessions involuntary in law. And if these words of inducement were objectionable, assuredly those of the present case are no less so. They are of the same precise tenor and effect."

Yet, in the instant case, although the point was elaborately argued in defendant's brief, the Court of Appeals overrules the assignment of error based on Inspector Grant's statement that it would be better for the petitioner to tell the truth without even noticing it except insofar as it may be said to be noticed by the general statement that "the other errors assigned are not of sufficient importance to merit consideration."

Petitioner respectfully urges that there is no material difference between the situation dealt with in this assignment of error, and that sustained in the West case, unless it be the difference, unfortunate for petitioner, that since the decision in the West case, the United States Judicial Code has been so amended as to take away from the defendant in a criminal case the *right of writ of error* to this Honorable Tribunal, thus leaving petitioner without remedy except on writ of certiorari, the issuance of which is discretionary.

### III. *Petitioner's Statements Being Confessions and Not Voluntary Were Therefore Inadmissible.*

It follows irresistibly from the authorities that if the petitioner's statements were confessions and were not voluntary they are inadmissible:

"In short, the true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort" (Mr. Chief Justice Fuller in *U. S. vs. Wilson*, 162 U. S., 613, at 623, quoted with approval in *Bram vs. United States*, 168 U. S., 532, at 548).

But the learned Court of Appeals holds in the instant case

"The crucial test to be applied in determining whether or not a confession is voluntarily or involuntarily made, depends upon its truth or falsity,"

and adds a little further on,

"Applying this rule, the present confession accords with every reasonable theory of guilt. All

the circumstances in the case corroborate it. Therefore, its admissibility, as competent evidence for the consideration of the jury, is supported by every principle of law."

It is submitted with all deference that this amounts to changing accepted law by judicial definition. This Honorable Court says a confession is admissible if voluntary. The learned Court of Appeals says it is voluntary if it is true, and therefore admissible if true, and proceeds to apply this rule to the instant case by saying that the admissibility of petitioner's confession is "supported by every principle of law," because "all the circumstances in the case corroborate it."

This last statement invites a comparison between the written confession and the physical facts as shown by the record, which petitioner would welcome if he deemed himself at liberty to enter into it without overstepping the limitations of this proceeding. It is sufficient here to say that whatever the results of such a comparison it is believed that they were irrelevant in the trial court until the confession was properly admitted in evidence, and were then only for the consideration of the jury, and were likewise wholly irrelevant in the Court of Appeals.

#### *IV. There Was No Issue to Go to the Jury.*

The learned Court of Appeals says in its opinion:

"The testimony of defendant was in the nature of a general denial of the evidence given by the officers and witnesses on behalf of the Government, especially as to defendant's alleged treat-

ment by the officers, which he claims induced him to confess. This, however, presented a well defined issue of fact as to whether or not the confession was voluntarily made, and, like all other issues of fact, was one for the consideration of the jury."

But it is submitted that the statements which the police officers themselves testified that they made to petitioner, and which, of course, the petitioner did not deny, rendered the confessions involuntary as a matter of law. No statement has been relied on in this Petition and Brief as showing the confession to have been involuntary except the uncontradicted statements of the Government's own witnesses, and the same is true with respect to the defendant's brief in the Court of Appeals. The Court of Appeals of the District of Columbia said in the West case heretofore cited:

"There is no contradiction by him (the defendant) of the words of inducement used by the officers; and those words being such as, under the decision in the Bram case, were sufficient to render the confession involuntary in law, there was nothing to be passed upon by a jury." (20 D. C. App. 347, at 352.)

In view of the uncontradicted statements of the police officers themselves as to the manner in which the confessions of petitioner were obtained, the question as to whether such confessions were admissible in evidence to convict him was wholly one of law.

In the instant case, as said in West's case, there



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Please take notice that the foregoing petition and brief in support thereof will be presented to the Supreme Court of the United States on Monday, October 1st, A. D. 1923, at the opening of Court, or as soon thereafter as counsel may be heard.

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FREDERICK D. McKENNEY,  
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Service of copy of above notice and of the foregoing  
petition and brief accepted this                      day of July,  
A. D. 1923.

.....

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COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 127

SIANG SUNG WAN, PETITIONER,

v.

THE UNITED STATES OF AMERICA.

PETITION FOR CERTIORARI TO THE COURT OF APPEALS OF  
THE DISTRICT OF COLUMBIA.

FREDERIC D. MCKENNEY,  
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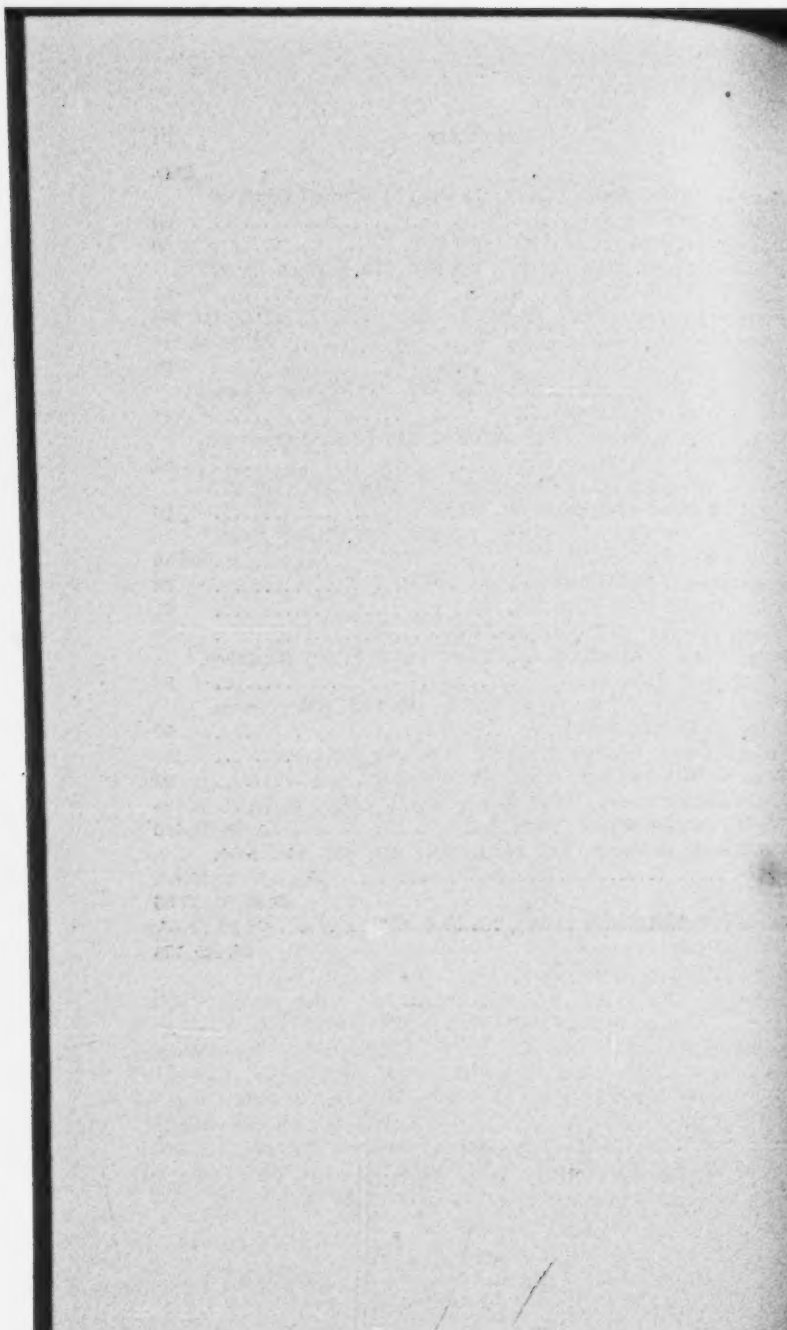
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**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1923.**

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**No. 451.**

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**ZIANG SUNG WAN, PETITIONER,**

*vs.*

**THE UNITED STATES OF AMERICA.**

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF  
THE DISTRICT OF COLUMBIA.**

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**GENERAL STATEMENT.**

September 30, 1919, the Petitioner, Ziang Sung Wan, a Chinese subject, who had come from Shanghai, China, to the United States in 1916, was indicted by a grand jury in the District of Columbia for murder in the first degree of another Chinese subject, Ben Sen Wu, employed at the time as clerk of the Chinese Educational Mission, located at No. 2023 Kalorama Road, in the City of Washington.

The indictment contained four (4) counts, each

charging the petitioner, hereinafter styled Wan, with killing Ben Sen Wu, hereinafter styled Wu, and differing from each other in the following respects: Counts 1, 2 and 3 charged Wan with the killing of Wu while attempting to commit different offenses punishable by imprisonment in the penitentiary; that is, (1) while housebreaking with intent to commit the crime of forgery; (2) while housebreaking with intent to commit larceny; and (3) with killing while engaged in perpetrating the crime of forgery.<sup>1</sup>

The fourth (4th) count, in apt language, charges petitioner with murder in the first degree in that of his "deliberate and premeditated malice" he did kill Wu with a pistol loaded with gunpowder and metal bullets (R., 1-5).

Upon impanelling the jury and before any witness had been called, counsel for petitioner moved the trial court to require the Government to elect upon which one of the counts in the indictment it would go to the jury. This motion was overruled (R., 24). At the conclusion of the Government's case in chief, counsel again moved that the Government be required to elect upon which count or counts it would stand, and again the motion was denied (R., 122).

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(<sup>1</sup>) Sec. 798, Code D. C.—"Murder in First Degree.—"Whoever, being of sound memory and discretion, purposely, and either of deliberate and premeditated malice or by means of poison, or in perpetrating or attempting to perpetrate any offense punishable by imprisonment in the penitentiary, kills another, is guilty of murder in the first degree."

At the conclusion of all the testimony, the District Attorney withdrew counts 1, 2 and 3 from further consideration, and the trial justice thereupon instructed the jury to find its verdict in favor of Wan on each thereof (R., 170), which it did (R., 7) and at the same time found him "guilty of murder in the first degree in manner and form as charged in the said fourth count of the indictment" (R., 7).

The refusal to require such election at an earlier stage of the trial undoubtedly accounts for much of the confusion and unnecessary prolongation of the trial adverted to by the trial justice in his instructions to the jury (R., 169).

There was no witness to the killing of Wu, and all evidence tending to connect Wan with the crime, with the exception of certain confessions on his part which it is contended were illegally extorted from him and improperly admitted in evidence against him over objections seasonably made and duly preserved of record, was wholly circumstantial, and apart from such confessions wholly insufficient to justify a verdict of guilty and to support the judgment sentencing Wan to death on the gallows (R., 8).

In the Supreme Court of the District of Columbia the case was tried before Mr. Justice Gould and a jury. Judgment was passed and entered May 14, 1920, and appeal to the Court of Appeals of said District was prayed and allowed same date—issuance of citation being waived (R., 8).

June 21, 1920, time for submitting bill of exceptions was extended to and including November 1, 1920, on which date draft of bill of exceptions as prepared by counsel for Wan was submitted to the court. Mr. Justice Gould, after a somewhat prolonged illness, died May 20, 1921, without having acted upon same, and thereafter same was submitted for approval to the justice of the Supreme Court of the District of Columbia presiding in Criminal Court No. 1, that is, to Mr. Chief Justice McCoy, on October 28, 1921 (R., 9).

November 22, 1921, counsel for Wan moved to vacate the judgment previously entered against him, to set aside the verdict of the jury and to grant a new trial because of the death of the trial justice, the bill of exceptions as submitted to him not having been settled (R., 10) and such motion was overruled the same day (R., 10-11).

Thereafter, "over the objection and exception on behalf of the defendant (Wan), and after an examination of the typewritten transcript of the stenographic notes of the trial, *certain original exhibits used at the trial, and interviewing the stenographer who reported the proceedings at the trial as to the points where it is stated in the bill such notes were consulted,*" Mr. Chief Justice McCoy, then presiding in Criminal Court No. 1, for reasons stated in his order, including one to effect that "*because where there has been a difference (between counsel) as to exhibits a comparison by the court of the exhibits is relied upon to sustain the*

ruling of the court," "being satisfied that he can allow a true bill of exceptions," signed defendant's bill of exceptions and made the rulings with respect thereto shown therein, "now for then this 30th day of November, A. D. 1921" (R., 180), and ordered same of record *nunc pro tunc* (R., 11). [Italics supplied.]

Specific objection to the general authority of Mr. Chief Justice McCoy to take such action was timely made and exception to the overruling thereof was properly preserved of record (R., 179).

The Court of Appeals of the District of Columbia, after hearing, on May 7th, 1923 affirmed the judgment of the Supreme Court of the District of Columbia (R., 187). The opinion of said Court of Appeals appears at pages 181 *et seq.* of the printed record and is reported in 289 Federal Reporter, 908, *et seq.*

Upon the ground that the learned trial court in the course of the trial improperly and contrary to the Federal rules of evidence expounded by this court in *Bram v. United States*, 168 U. S., 532, *et seq.*, had admitted in evidence certain "confessions" of defendant alleged to have been voluntarily made by him to officers of the law who had him in custody, petition for certiorari was filed in this court, July 24, 1923, and October 17, 1923, the Court of Appeals of the District of Columbia was commanded to send to this court "the record and proceedings in said cause, so that the said Su-

preme Court (of the United States) may act thereon as of right and according to law ought to be done" (R., 189).

Certiorari and return thereto were duly filed in this honorable Court, October 25, 1923, and so the case now comes on for hearing and final disposition.

#### Statement of the Facts.

The learned Court of Appeals of the District of Columbia as basis for the *ratio decidendi* of its opinion, and as support for its judgment of affirmance, has collated and stated the salient facts and judicial history of the case as follows (R., 181-183):

Appellant Ziang Sun Wan appeals from a verdict and judgment in which he was found guilty of murder in the first degree and adjudged to pay the death penalty.

It appears that about January 22, 1919, defendant Wan came from New York to Washington and stopped at the Chinese Educational Mission, which at that time was conducted by Dr. Thomas T. Wong, Director, C. H. Hsie, Secretary-Treasurer, and Ben Sen Wu, Secretary and Clerk. Defendant remained at the Mission, located at 2023 Kalorama Road, this city, until January 27th, when he procured a room at the Harris Hotel. On the same day he telegraphed his brother Van in New York City to come to Washington. On the next day he sent a second telegram to his brother urging him to come immediately. On the following day



the brother arrived and was seen at the Harris Hotel between 9:00 and 10:00 o'clock a. m. On the evening of January 29th Kang Li, a student under the supervision of the Mission, called at the Mission and defendant came to the door. He inquired whether Mr. Wu or Dr. Wong were at home. Defendant replied that they had gone out and that he was going out later. About midnight Wan and his brother Van were seen together at the Harris Hotel.

The testimony on *behalf of the Government*<sup>(1)</sup> shows that on the following morning, January 30th, defendant and his brother engaged a taxicab near the Union Station and drove to the Riggs National Bank, where Wan remained in the cab while Van entered the bank and presented for payment a check in the sum of \$5,000, purporting to be signed by C. H. Hsie and Dr. Wong and drawn upon the account of the Chinese Educational Mission. The bank, after some investigation and at the suggestion of the brother, telephoned the Mission but received no reply. The bank then refused to cash the check without further identification and defendant and his brother returned to the Union Station, where the brother paid for the use of the taxicab. About noon of the same day defendant checked out at the Harris Hotel, and about 5 o'clock in the evening the brother was seen near his lodging place in New York, and defendant was seen at a Chinese Cafe in that city at 7:45 p. m. of the same day.

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(1) Italics supplied.

It further appears that Dr. Wong and Hsie were last seen alive between 10 and 11 o'clock on the night of January 29. On January 30th a letter-carrier made three attempts to deliver mail at the Mission but no one responded. On the evening of January 31st, the Chinese Legation caused the Mission to be entered by Kang Li, who found the body of Dr. Wong in the reception hall with two gunshot wounds in his chest, one of which had entered the heart; and the bodies of Wu and Hsie were found in the basement, one having gunshot wounds in the chest and the other gunshot wound in the head. A 32-caliber revolver was found on a chair in the basement.

On February 1st, defendant was arrested in New York and, together with his brother Van, brought to this city. Defendant gave conflicting accounts as to his whereabouts after leaving the Mission on January 27th. He first said that he had left Washington on that date, but when confronted by Kang Li, who saw him at the Mission on the evening of January 29th, he then said that he left Washington on the 29th. When questioned he insisted that he had taken dinner with Hsie and Wong on the evening of January 29th, and that Wong had gone with him to the Union Station where he took a train leaving for New York. When his attention was called to the fact that Wong had dined on the 29th with a Mr. Jeffers, defendant admitted that Wong did not dine with him, but insisted that he did go with him to the station.

Defendant was held in custody at a hotel

until February 8th, when, at his request, he was taken by the officers to the mission. He was there confronted with photostat copies of his own handwriting, and also a photostat copy of a check stub, from the check book of the Chinese Educational Mission, upon which was written "T. T. Wong, \$5,000." When confronted with the copies of his own writing and the check stub he finally admitted that he had written the check.

From the Mission House the defendant was taken to the police station and there charged with murder. On the following day the defendant told the officers that he saw the three Chinamen killed and that a Chinaman named Chen had killed them. When urged for an account in detail, he answered that he was tired, but would tell them about it the next day. The following day he again requested to be taken to the Mission, and when they arrived there he began to explain in detail how Chen had killed the three men, but on being told by an officer that he knew that Chen had not committed the murder, defendant then said in effect that he and Wu were engaged in forging the \$5,000 check, when Wong and Hsie came into the house; that Wu having procured the revolver killed Wong and Hsie and that he, defendant, a short time after shot Wu. On the following day, February 11th, defendant made a detailed statement to an officer which was taken down stenographically, transcribed, and on February 12th signed by the defendant.

It will be observed that the greatest deliberation and consideration was displayed

by the officers toward defendant when he first suggested at the police station, on Sunday evening, following the first visit to the Mission House, that he witnessed the murder.<sup>1</sup> When pressed for details, "he said he was tired, wanted to go to sleep, would talk no more tonight." They left him to consider the matter until the next morning, when they again visited him in the police station and at his request he was taken to the Mission, where he began to detail the killing, charging Chen with the killing of Wu. At this point one of the officers said "Wan, you know how this happened. You put a man by the name of Chen in it. I know there was no Chen. You are the man that you are placing here in the story as Chen." After hesitating a minute defendant said, "Yes, I will tell you the whole truth. Chen was not in it." After detailing the killing as already outlined, he was taken back to the police station, and not until the next day was he questioned for the purpose of procuring a stenographic report, and not until the following day was he presented with the extended report for his signature. Through all this period he had an opportunity to deliberate upon the effect the making of the confession would have upon his case. It also appears from the signed confession, that before making the statement he was cautioned by the officer as follows: "We would like for you to make a statement. Your statement must be voluntary

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(<sup>1</sup>) It will be observed that this statement involves questions of opinion and inference rather than matters of fact.

and if you make it I want to tell you it will be used against you in court. You do not have to make a statement unless you want to. I just want to inform you of your rights in the matter."

The defense offered as a witness defendant's brother Van, who testified that on January 30th he and defendant went to the Union Station where they met two Chinamen, T. P. Wong and Moy, whom Van had met the day before; that Wong told Van that he had a check which he wanted cashed; that he did not speak English very well, and that he wanted Van to help him cash the check. He testified that it was Wong and not Wan who went with him to the Riggs Bank and remained in the taxicab while he was in the bank attempting to have the check cashed, which he alleges Wong had given him.

The defendant took the stand on his own behalf and denied all connection with the murder, corroborated his brother to the effect that it was Wong and not he who went with Van to the bank; denied that he admitted that the signature on the check stub was his, and accounted for the signed confession on the theory that the officers had importuned him to confess, threatened him, and used abusive language toward him. He testified in substance that when he signed the confession he knew what he was doing, but that he signed it because he was sick and wished to be left alone.

The testimony of defendant was in the nature of a general denial of the evidence given by the officers and witnesses on be-

half of the Government, especially as to defendant's alleged treatment by the officers which he claims induced him to confess. This, however, presented a well-defined issue of fact as to whether or not the confession was voluntarily made, and, like all other issues of fact, was one for the consideration of the jury. The issue of the voluntary or involuntary character of the confession was submitted to the jury in a very full and complete charge, in part as follows: "The test of the case, and the inquiry that you will have to make in answer is: Did the questioning, did the physical condition, did the importunate questioning, if you choose to call it so, render the confession made by this defendant not his own; but did it substitute for his will the will of another, and thus was it or not his voluntary act? It is impossible to define the limit to which an officer may or should go in detecting or attempting to detect crime. On the one side he has his duty to the public, to us, always. On the other hand, he must not infringe upon the rights of the citizen, no matter who he may be. He must leave the confession in such a way that you can satisfy yourselves that it is the ultimate expression of the will of the defendant, the voluntary statement of what he knows about his connection with the case."

In compiling such statement of facts, the learned Court of Appeals of the District of Columbia inadvertently fell into error in certain particulars of minor character and importance, about which there



can be no real dispute on the record, and to which, in the interest of precision, we venture to call attention.

At page 181, fifth and fourth lines from bottom, it is said "and defendant (Wan) was seen at a Chinese cafe in that City (New York) at 7.45 p. m. of the same day" (*i. e.*, January 30, 1919).

This is a mistake, and there is nothing in the testimony at any point to support it.

Mrs. Bartels, a landlady, with whom petitioner Wan and his brother Van lived, at 313 112th Street, New York City, and the only witness other than the brothers who testified upon the point, gave testimony tending to prove that Wan left New York City for Washington January 22, 1919; "the next time he was there was a week from Thursday, the 23d of January, 1919, that is, January 30, 1919." "Witness saw him (Van) that Thursday afternoon between four and five o'clock on the street going to the store; did not see Wan that day, and saw him the next day, Friday (January 31st) in the morning, \* \* \* he was lying in bed sick" (R., 25). Van states that upon arrival in New York between four and five, early, went to room, undressed defendant, and put him to bed" (R., 125). Wan says "when arrived there in afternoon, went to place where was rooming, 313 West 112th Street; went to bed; Van went out and bought witness something to make some soup, \* \* \* witness (Wan) did not go out at all" (R., 137).

This is all of the evidence on the point.

The expression used by the learned writer of the opinion of the Court of Appeals first appeared on page 3 of the Government's brief in that court and referred to Ben Sen Wu, the murdered man, not to his alleged murderer, and to a different date, January 29th, not January 30th.

Again, at page 182, it is said "on February 1st, defendant (Wan) was arrested in New York, and, *together with his brother Van*, brought to this city." (Italics supplied.)

Burlingame, a member of the Washington detective force, who went to New York with an associate, Kelly, and a Chinese student, Kang Li, says that "defendant (Wan) had expressed a wish to go to Washington, might be something he could do to assist in locating the murderers of his friends," and he *returned voluntarily* (R., 59, 60), and Major Pullman, Superintendent of Police, states "we told him (Wan) we appreciated his coming,—he came of his own accord" (R., 92).

Detective Kelly, who was with Burlingame on this occasion, says that he went to New York Sunday, February 2d, "and brought Van to Washington on Monday, February 3d" (R., 101, 104). This was two days after Wan had returned with Burlingame (R., 59).

Again, at page 182, it is said "When questioned he (Wan) insisted that he had taken dinner with Hsie and Wong on the evening of January 29th, and that Wong had gone with him to the Union Station where he took a train," &c., whereas Major

Pullman's statement on the subject plainly indicates that the name "Wong" and the names "Hsie and Wong" had been mistakenly substituted for "Wu" (R., 92).

Again, at the end of the third paragraph of page 182, it is said, referring to defendant Wan, "When confronted with the copies of his own writing and the check stub, he finally admitted that he had written the check." This is a mistake, for the check at no time was in evidence and what Wan, in the course of the testimony, was alleged to have admitted was that he had written the "T. T. Wong \$5,000" on the stub (R., 93).

Again, according to the statement of the opinion, the defendant Wan "told the officers that he saw the three Chinamen killed and that a Chinaman named Chen had killed them" (R., 182).

The testimony upon this point, given by Inspector Grant, was that

"He saw all three killed, but did not take any part in it; that a man named Chen had killed Wu after Wu had killed Dr. Wong and Mr. Hsie" (R., 81, 90).

and this statement is specifically corroborated by Kelly at page 103 of the record.

Again, at page 183, it is said that Van "testified that on January 30th, he and (Wan) went to the Union Station where *they* met the two Chinamen, T. P. Wong and Moy," whereas Van's uncontradicted statement which appears at page 124 of the

record was that having seated Wan he "went over to find information about trains to New York" and he "looked into the men's waiting room, see the two fellows T. P. Wong and Moy," &c., there being no testimony at any point in the record to the effect that the defendant Wan ever saw or came in contact with the Chinamen Wong and Moy, but that after Wan and Van had returned to New York, he (Van) "told brother met the two fellows, the tall fellow, T. P. Wong, and gave him description," &c., &c. (R., 125).

Again, at page 184, after quoting Wan's statement as follows:

"Mr. Grant, after what you said, who is the man who went to the bank; who is the murderer?"

the opinion continues:

"Counsel for defendant moved to strike out this statement for the reason that it was not shown to have been voluntarily made, but was made in reply to an inducement by the officer. Counsel seems to have regarded the statement as a confession."

The sentence above quoted was made in the course of defendant (Wan's) testimony while on the stand in his own behalf, and appears in paragraph 2 on page 140 of the Record. Inspection of that page shows that this statement of Wan's was not followed by any motion of counsel to strike out at all, the fact being that assignment of error in

this regard is based upon Inspector Grant's own narrative of the alleged occurrence, which first appears at page 79 of the Transcript of the Record, where, after asking "Who went to the bank?" and saying to Wan "That has nothing to do with the murder; tell me who went to the bank," Wan is said to have replied "If you get the man who went to the bank, you will get the murderer." At this point it was that counsel for the defendant moved that the statement quoted "be stricken out, on the ground that it was not shown to be voluntary and was made in reply to statements of the police officer in the nature of an inducement."

With the corrections noted, which, as stated, are with reference to minor rather than major matters, and with additions thereto by reference and extracts from the bill of exceptions itself, which will be made and occur in the course of the argument to follow, petitioner is content to accept the above statement of the facts by the Court of Appeals as affording fair basis for the argument which follows.

#### ASSIGNMENTS OF ERROR.

It was error in the circumstances to admit in evidence against petitioner, and submit to the jury for its consideration the confessions testified to by the police officers Pullman, Grant, Burlingame, and Kelly, from which an inference of guilt might be drawn and upon the acceptance of which by the

jury as voluntary and true, the verdict of guilty returned in this case alone can be upheld.

Error in holding that the "crucial test to be applied in determining whether or not a confession is voluntarily or involuntarily made, depends upon its truth or falsity."

Error in holding that evidence of the financial condition of the accused at and prior to the time of the homicide and the adoption of a *presumption* that he was indebted to Wu at the time of the homicide could rightly be considered and accepted by the jury as establishing motive for the commission of the crime.

Error in holding that Section 953 of the Revised Statutes of the United States as amended by Act of Congress of June 5, 1900 (31 Stats. L., 270), is applicable to cases tried in and before the Supreme Court of the District of Columbia.

Error in holding that counsel for Wan had waived all right to claim error on appeal with respect to the certain examination by the learned trial justice of said Wan when on the stand as a witness in his own behalf, as said examination and colloquy respecting same appears at pages 151 to 155, both included, of the transcript of record before this honorable court.

Error in sustaining the refusal of the learned trial justice to permit the petitioner when on the stand as a witness in his own behalf to state what K. S. Wang, when acting under instructions of Inspector Grant, who had petitioner in charge, had said to him.



The most important question in this case before the Court of Appeals of the District of Columbia and before this Honorable Court is as to the admissibility in evidence of various statements made by petitioner which were admitted over his objection in the trial, exceptions being duly noted and error assigned on the ground that they were each and all confessions shown by Government's witnesses to be involuntarily made. These statements will be discussed in the order in which they appear in the record under two genral heads,—*First*, were they "confessions," and *Second*, were they voluntarily made?

#### **I. Petitioner's Statements Were "Confessions."**

The opinion of the learned Court of Appeals in sustaining the ruling of the trial court in admitting the statements in question raises *in limine* the fundamental issue, what is a "confession?" Is an exculpatory statement or any statement not intended as a direct admission of guilt a confession and therefore to be excluded unless voluntarily made? The Government strenuously contended in the Court of Appeals for the negative of this proposition; that is to say, that only a direct admission of guilt is a confession, and the Court of Appeals sustained this contention.

(1) *Statement Friday, February 7th, at the Dewey Hotel, "If you get the man who went to the bank, you will get the murderer."*<sup>1</sup>

The first statement raising this issue was made on Friday afternoon, February 7th, after the petitioner, ill, *incommunicado*, "in a foreign land" (to use the language of this Honorable Court in the *Bram* case, *Bram v. U. S.*, 168 U. S., at p. 563) had withstood long continued, pertinacious and harassing examinations by the police officials for an entire week. Then, in the course of one of these examinations, the following took place, as stated by the learned Court of Appeals in its opinion:

"An officer testified that while defendant was at the hotel he was being questioned by the witness respecting the taking of the check to the bank. The officer asked him who went to the bank, suggesting 'that has nothing to do with the murder, tell me who went to the bank;' and the defendant said

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(<sup>1</sup>) It will be observed that in its opinion the Court of Appeals uses the language in which the petitioner testified to this statement: "Who is the man that went to the bank, who is the murderer?" (R., p. 140). This statement had, however, previously been admitted, over petitioner's objection and exception duly noted, in the following form, as testified by Inspector Grant: "If you get the man who went to the bank, you will get the murderer" (R., p. 79). Inspector Grant repeated substantially the same language on his cross-examination (R., p. 85). Lieutenant Burlingame, over petitioner's objection and exception, had also testified to practically the same language: "If you find the man who went into the bank with the check, you will find the murderer" (R., p. 65). Compare cross-examination (R., p. 75).

'Mr. Grant, after what you said, who is the man who went to the bank; who is the murderer?' " (R., p. 184.)

This statement was admitted over petitioner's motion to strike and exception duly noted, on the ground that it was not shown to have been voluntarily made. The learned Court of Appeals held that there was no merit in the petitioner's assignment of error, not on the ground that the statement was in truth voluntary, but on the ground that it was not a "confession." The opinion of the Court of Appeals on this point reads as follows:

"Counsel seems to have regarded the statement as a confession. It was not even an admission of defendant's connection with the transaction. It was a mere casual observation which an innocent bystander might logically have made. At the stage of the investigation when the statement was made, it had not more significance, coming from guilty lips, than if it had been innocently uttered. It only became a significant circumstance, when in his confession defendant subsequently admitted that he and his brother took the check to the bank, and his further statement in the confession that the forgery of the check was directly associated with the commission of the murder" (R., p. 184).

It is submitted with all deference that this is not the law as laid down by this Honorable Court. From the point of view of the detective to whom

this statement was made, who knew that petitioner's brother had gone to the bank and doubtless believed that petitioner had accompanied him, petitioner himself was "the man who went to the bank," and the statement was offered by the Government to prove out of petitioner's own mouth that he was the murderer. From the point of view of the petitioner on the other hand, the statement may be regarded as exculpatory as tending to shift suspicion from himself to "the man who went to the bank." The petitioner had at that time not admitted that he went to the bank. Petitioner afterwards in the course of further confessions, the admissibility of which is also disputed, admitted having gone to the bank, but he repudiated this admission along with the rest of the confessions and testified at his trial that he did not go to the bank. But whether petitioner's statement was on its face incriminatory or exculpatory, in either case it might in the light of all the circumstances tend to implicate him in the commission of the crime charged, and on that theory was offered in evidence by the Government and admitted by the court over petitioner's objection, and it is now too late to justify its admission as "a casual observation."

In the *Bram* case this court, dealing with statements on their face exculpatory, but offered "because of an implication of guilt" (168 U. S., at p. 562), namely, a statement made by Bram that one Brown "could not have seen me; where was he?"

and again, the statement, "well I think and many others on board the ship think that Brown is the murderer," held these statements to be confessions and subject to the rules of exclusion applying thereto. The opinion of the court on this point, handed down by the late Chief Justice White, then Associate Justice, is as follows:

"The principle on the subject is thus stated in a note to section 219 of Greenleaf on Evidence; 'The rule excludes not only direct confessions, but any other declaration tending to implicate the prisoner in the crime charged, even though, in terms, it is an accusation of another, or a refusal to confess. *Rex v. Tyler*, 1 C. & P. 129; *Rex v. Enoch*, 5 C. & P., 539. See further, as to the object of the rule, *Rex v. Court*, 7 C. & P., 486, per Littledale, J.; *People v. Ward*, 15 Wend., 231.' Nor from the fact that in *Wilson v. United States*, 162 U. S., 613, mention was made of the circumstance that the statement of the accused was a mere denial of guilt accompanied with exculpatory explanations, does the decision of that case conflict with the principle we have just stated. The ruling there made that error to the prejudice of the accused did not arise from the admission of the statement there considered, was based not alone upon the nature of the statement, but upon 'the evidence of its voluntary character; the absence of any threat, compulsion or inducement; or assertion or indication of fear; or even of such influence as the administration of an

oath has been supposed to exert' (p. 624).

"The contradiction involved in the assertion that the statement of an accused tended to prove guilt, and therefore was admissible, and then after procuring its admission claiming that it did not tend to prove guilt, and could not, therefore, have been prejudicial, has been well stated by the Supreme Court of North Carolina, *State v. Rorie* (1876), 74 N. C., 148:

" 'But the State says this was a denial of guilt and not a confession. It was a declaration which the State used to procure a conviction; and it is not for the State to say the declaration did not prejudice the prisoner's case. Why introduce it at all unless it was to lay a foundation for the prosecution? The use which was made of the prisoner's statement precluded the State from saying that it was not used to his prejudice' (p. 150). (*Bram v. United States*, 168 U. S., 532, at 541-542.)

(2) *Alleged Statement Saturday Night, February 8th, at the Mission House, That Petitioner Wrote the \$5,000 Check Stub.*

The next day, Saturday, February the 8th, the police officers took the petitioner to the Mission House where the murder had been committed and kept him up all night, going over the details of the crime as they had worked them out and ceaselessly questioning him in relays from 7:30 p. m. to 5:00 a. m. During the course of this questioning, peti-



tioner, according to the testimony of the officers, admitted that the entry on the check stub in the check book of the Educational Mission, "T. T. Wong, \$5,000," was in his handwriting. Petitioner on the stand denied making this statement, saying that he merely said it looked like his handwriting. The admission of this statement was assigned as error, but the Court of Appeals holds:

"As to the alleged admission respecting the handwriting, it does not come within the category of a confession, since it is admitted by defendant in his signed confession, testified to by the officers, and denied by defendant on the witness stand. Hence it is reduced to a mere fact or piece of competent evidence upon which there was a conflict in the testimony, and which was properly submitted to the jury for its consideration" (R., p. 184).

In passing, it is earnestly submitted that if this statement was inadmissible as a matter of law as a confession involuntarily made, it could not have become admissible because the defendant later denied making it. (*West v. United States*, 20 App. D. C., 347, at p. 352.) But the present point is that the Court of Appeals holds it admissible because it was not a confession, for the learned court proceeds:

"The term confession has no application to a mere admission or statement of an independent fact from which guilt may be inferred; or even to incriminating acts. *State v. Campbell*, 73 Kans., 688; *Rusher v. State*,

oath has been supposed to exert' (p. 624).

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(2) *Alleged Statement Saturday Night, February 8th, at the Mission House, That Petitioner Wrote the \$5,000 Check Stub.*

The next day, Saturday, February the 8th, the police officers took the petitioner to the Mission House where the murder had been committed.

*Footnote to Heading 2, to be Inserted on Page 24.*

Lt. Burlingame testified with reference to the \$5,000 check stub over petitioner's objection and exception:

"They pressed him for an answer as to who wrote that. He looked at it for some time, probably two or three minutes before he answered, then said 'Well, I think I write that.' The Major said, 'I don't want you to tell me what you think, you know whether you wrote it or not.' Then he said, 'I write that,' referring to the writing on the stub of the check book." (R., 67.)

For Inspector Grant's testimony over objection duly noted in regard to the same incident see Record, pages 79 and 80. Cross-examination, pages 87, 88. For Major Pullman's testimony, see Record, pages 93, 98, 99.

tioner, according to the testimony of the officers, admitted that the entry on the check stub in the check book of the Educational Mission, "T. T. Wong, \$5,000," was in his handwriting. Petitioner on the stand denied making this statement, saying that he merely said it looked like his handwriting. The admission of this statement was assigned as error, but the Court of Appeals holds:

"As to the alleged admission respecting the handwriting, it does not come within the category of a confession, since it is admitted by defendant in his signed confession, testified to by the officers, and denied by defendant on the witness stand. Hence it is reduced to a mere fact or piece of competent evidence upon which there was a conflict in the testimony, and which was properly submitted to the jury for its consideration" (R., p. 184).

In passing, it is earnestly submitted that if this statement was inadmissible as a matter of law as a confession involuntarily made, it could not have become admissible because the defendant later denied making it. (*West v. United States*, 20 App. D. C., 347, at p. 352.) But the present point is that the Court of Appeals holds it admissible because it was not a confession, for the learned court proceeds:

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94 Ga., 363. In other words, an admission not of guilt, but tending merely, in connection with other facts, to establish guilt, does not amount to a confession. *McGehee v. State*, 171 Ala., 19, 21; *People v. Jan John*, 144 Cal., 284; *State v. Willis*, 71 Conn., 293; 2 Wigmore on Evidence, Sec. 1050.

“A confession is a declaration made by a person charged with crime acknowledging his participation in its commission” (R., pp. 184-185).

It is submitted with all deference that here again is a plain departure from the rule in the *Bram* case which excludes “not only direct confessions but any other declaration tending to implicate the prisoner in the crime charged.” Certainly if the petitioner said that he wrote the entry on the check stub this had some tendency to implicate him in the crime charged, and it was admitted on this theory. The weight of the evidence is immaterial. As this honorable court said in the *Bram* case:

“It is manifest that the sole ground upon which the proof of the conversation was tendered was that it was a confession, as this was the only conceivable hypothesis upon which it could have been legally admitted to the jury. It is also clear that in determining whether the proper foundation was laid for its admission, we are not concerned with how far the confession tended to prove guilt. Having been offered as a confession and being admissible only because of that fact, a consideration of the measure of proof which

resulted from it does not arise in determining its admissibility. If found to have been illegally admitted, reversible error will result, since the prosecution cannot on the one hand offer evidence to prove guilt, and which by the very offer is vouched for as tending to that end, and on the other hand for the purpose of avoiding the consequences of the error, caused by its wrongful admission, be heard to assert that the matter offered as a confession was not prejudicial because it did not tend to prove guilt" (*Bram v. United States*, 168 U. S., 532 at 541).

(3) *Statement Sunday February 9th at the Precinct Station that Petitioner was Present at the Scene of the Crime and Saw One Chen Kill Wu After Wu had Killed Wong and Hsie.*

The assignment of error in regard to the admission of this vitally incriminating statement is not specifically dealt with by the learned Court of Appeals in the course of its opinion.

The Government in its brief in the Court of Appeals argued that this statement was not a confession, but "at most, only an admission against interest" relying among other authorities, on 2

*Footnote to Heading 3, to be Inserted on Page 27.*

Inspector Grant over objection made and exception noted testified as follows:

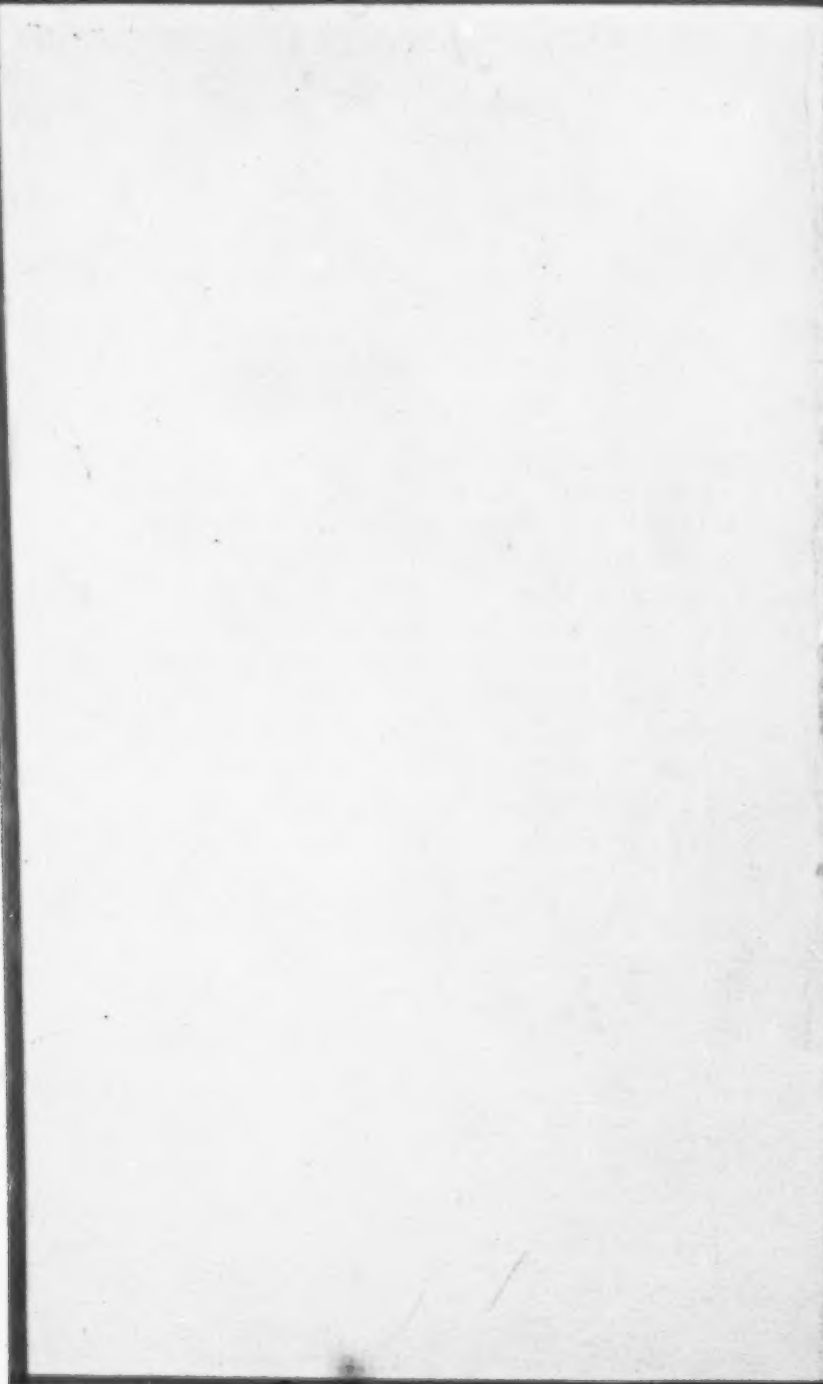
"Q. Will you tell me what occurred on that occasion as nearly as you can recall?"

"A. There is where this man said he wanted to tell his story, and he told me about seeing all three of these men killed." (R., p. 80.)

"Defendant then told witness he saw all three killed, but did not take any part in it; that a man named Chen had killed Wu after Wu had killed Dr. Wong and Mr. Hsie." (R., p. 81.)

Lt. Burlingame (R., p. 68) testified to the same effect over defendant's objection and exception.

For Lt. Kelly's testimony, see R., pages 102, 103.





resulted from it does not arise in determining its admissibility. If found to have been illegally admitted, reversible error will result, since the prosecution cannot on the one hand offer evidence to prove guilt, and which by the very offer is vouched for as tending to that end, and on the other hand for the purpose of avoiding the consequences of the error, caused by its wrongful admission, be heard to assert that the matter offered as a confession was not prejudicial because it did not tend to prove guilt" (*Bram v. United States*, 168 U. S., 532 at 541).

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The assignment of error in regard to the admission of this vitally incriminating statement is not specifically dealt with by the learned Court of Appeals in the course of its opinion.

The Government in its brief in the Court of Appeals argued that this statement was not a confession, but "at most, only an admission against interest," relying, among other authorities, on 2 Wigmore on Evidence, Section 1051. The learned Court of Appeals in overruling the exception and the admission of the defendant's statements with respect to the handwriting on the check stub, also relies on Wigmore, Section 1050.

Prof. Wigmore in the course of his discussion of

the subject of admissions, Section 1050, does indeed distinguish between admissions and confessions, and supports the limited definition of confessions contended for below by the Government and adopted by the learned Court of Appeals in its opinion. Prof. Wigmore, however, is careful to cross-reference this section, which deals primarily with admissions, with his discussion of confessions at Section 821, and in this section he frankly admits that the doctrine for which he is contending is not the law in the courts of the United States. In Section 821, Prof. Wigmore seeks to distinguish between confessions and guilty conduct, exculpatory statements, and acknowledgments of subordinate facts not directly involving guilt, and he cites a number of cases in support of his statement in the text that "exculpatory statements denying guilt cannot be confessions," and that "this necessary meaning for the term confession is generally conceded." (Wigmore, Section 821, 1st Edition, pp. 928-9.) But in his footnote he follows the cases cited in support of this proposition with the following sweeping and specific admission:

"In the Federal Supreme Court this doctrine is ignored: 1896 *Wilson v. U. S.*, 162 U. S., 613, 621; 16 Sup., 895 (here exculpatory assertions were admitted, yet after a discussion of the principles of confession): 1897 *Bram v. U. S.*, 168 *Id.*, 532; 18 Sup., 183 (a statement in which the defendant exculpated himself by asserting that a witness B. could not have seen the defendant do the act, and

that he thought the witness B. did it, excluded as a confession; this *Bram* case, in this, as in other respects, reached the height of absurdity in misapplication of the law)."

(Petition, p. 20; Wigmore on Evidence, 1st Edition, Section 821, p. 929, footnote 2.<sup>1</sup>)

It is respectfully submitted that the authority relied on by the Government below and by the learned Court of Appeals proves too much. It proves that the distinction contended for has been repudiated, not merely once, but twice by this honorable tribunal, for as Prof. Wigmore himself points out, the *Wilson* case, so far as its *ratio decidendi* is concerned, is just as conclusive on this point as the *Bram* case.

In the *Wilson* case the defendant was convicted of murder after a trial in which certain statements made by him before the United States Commissioner had been admitted in evidence over his objection and exception duly taken. What these statements were are not disclosed in detail in the report of the case, but the statement of facts does show that "this statement was throughout a denial of guilt, but contained answers to questions which were made the basis for contradiction on the trial." (*Wilson v. United States*, 162 U. S., 613, at 616.)

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(<sup>1</sup>) The Second Edition of Professor Wigmore's treatise adds: "But later cases, cited *post passim*, have discredited the *Bram* case in general" (Wigmore's Second Edition, Sec. 821, footnote 2, p. 136). Compare cases cited and discussed, *infra*, II, 2.

Chief Justice Fuller, who delivered the unanimous opinion of the court, used the following language:

"This brings us to consider the exception taken to the admission of defendant's statement in evidence. The ground of the objection was that it was not voluntary. Although his answers to the questions did not constitute a confession of guilt, yet he thereby made disclosures which furnished the basis of attack, and whose admissibility may be properly passed on in the light of the rules applicable to confessions" (p. 621).

Then after laying down the general rule in regard to confessions the court quotes from *Hopt v. Utah*, 110 U. S., 574, as follows:

"But the presumption upon which weight is given to such evidence, namely, that one who is innocent will not imperil his safety or prejudice his interests by an untrue statement, ceases when the confession appears to have been made either in consequence of inducements of a temporal nature, held out by one in authority, touching the charge preferred, or because of a threat or promise by or in the presence of such person, which, operating upon the fears or hopes of the accused, in reference to the charge, deprives him of that freedom of will or self-control essential to make his confession voluntary within the meaning of the law. Tested by these conditions, there seems to have been no reason to exclude the confession of the accused; for the existence of any such induce-

ments, threats or promises seems to have been negatived by the statement of the circumstances under which it was made.' "

The learned court proceeds:

"In short, the true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort" (pp. 622-623).

Later on in the opinion the court reverts to the point that the statements here in question were not direct statements of guilt, saying:

"His answers were explanations, and he appeared not to be unwilling to avail himself of that mode of averting suspicion" (p. 624).

And, again, pointing out that the prisoner

"Was not confessing guilt but the contrary" (p. 624).

It is to be noted that the decision in the Wilson case was unanimous, and was handed down by Chief Justice Fuller who dissented in the Bram case, and that the dissent in the Bram case was not based upon any difference of opinion as to distinction between confessions and admissions, but purely upon the question whether or not the confession in that case was under all the circumstances voluntary.

It is therefore submitted that it is the settled law of this court that the rule against confessions

"excludes not only direct confessions but any other declaration tending to implicate the prisoner in the crime charged even though in terms it is an accusation of another or a refusal to confess" (*Bram case, supra*, p.

23).

and it is further submitted that this rule was expressly and in terms repudiated by the learned Court of Appeals in the instant case.

• Exercising the freedom from constraint and from control which commentators on judicial decisions enjoy, but which is denied to inferior courts in our system of jurisprudence, Professor Wigmore hesitates not at all to stamp his lively disapproval upon the views expressed *arguendo* and the conclusions announced by this august tribunal in its opinion in the *Bram case*, saying as above quoted with respect to the holding in the *Bram case* with respect to the particular point herein involved, *i. e.*, the legal definition of the word confession, "this *Bram case*, in this as in other respects, reached the height of absurdity in misapplication of the law." In other passages in his work on evidence Prof. Wigmore, in reference to the doctrines in the *Bram case* uses such language as "the highest pitch of irrationality on this subject"; "cloud the reputation of the Federal Supreme Court"; "that case should be forgotten," and more to the same purpose.

The learned Court of Appeals, restrained by its

sense of judicial propriety, has refrained from criticism or comment, but none the less it would seem in silence to have disregarded, not to say ignored, the authoritatively declared principles of law expounded in the Bram case upon which petitioner relied for his defense against illegal conviction. Although the Bram case was earnestly pressed upon the Court of Appeals by petitioner's counsel, that learned court makes no reference thereto except by way of reference to and comment on a time-honored passage of Russell on Crimes which was incorporated in the Bram case.<sup>1</sup>

(<sup>1</sup>) The reference in the opinion of the Court of Appeals to the Bram case is as follows:

"The rule as to the admissibility of confessions is concisely stated in 3 Russell on Crimes (6th Edition), 478, and approved in *Bram v. United States*, 108 U. S., 532, 548, as follows:

"'But a confession, in order to be admissible, must be free and voluntary; that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence. \* \* \* A confession can never be received in evidence where the prisoner has been influenced by any threat or promise; for the law cannot measure the force of the influence used, or decide upon its effect upon the mind of the prisoner, and therefore excludes the declaration if any degree of influence has been exerted.'"

and its comment upon such rule is as follows:

"In all cases, however, the confession must have been induced by the excitation of hope or fear arising from an actual threat or promise made by a person in authority. *Hardy vs. United States*, 3 App. D. C., 35, 46. Or as concisely summarized in the Bram case 'It must necessarily have been the result of either hope or fear, or both, operating on the mind.' \* \* \* The crucial test to be applied in determining whether or not a confession is voluntarily or involuntarily made, depends upon its truth or falsity" (R., p. 185).

In passing it may be noted that the expression quoted from the Bram case, "It must necessarily have been the result of either hope



It is submitted that the principles of decision in *Bram's* case were both pertinent and applicable in the highest degree to the facts in the instant case.

If those principles in fact reach heights of "absurdity in misapplication of the law," which we deny, courts throughout the United States should be so advised, and that can be done authoritatively only by this court itself.

If those principles are and remain the just expression of the best thought and judgment of this court, of final earthly resort, then the petitioner and his trial counsel charged with his defense in matters of law, were and still ~~yet~~ are entitled to rely upon them, and both the trial and appellate courts should have yielded ready submission to their existing expression.

Anything less than this would be to substitute untrammelled individual view for controlling judicial precedent, and to effect conviction of one charged with a capital offense otherwise than in accordance with law. In such a scheme of things, passion and prejudice would run unrestrained and the constitutional provision in favor of liberty and life and the prohibition against self-incrimination and being compelled to give evidence against one's self would degenerate into an empty phrase.

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or fear, or both, operating on the mind" when examined in its context appears to be the conclusion of this court from the specific facts of the *Bram* case and not as might be inferred from the language of the learned Court of Appeals, a statement of a general principle. See *Bram vs. U. S.*, 168 U. S., 532, at 542.

(4) *Oral Statement of Petitioner Monday, February 10th, at the Mission House.*

(5) *Written Statement of Petitioner Dictated Tuesday, February 11th, Signed Wednesday, February 12th.*

It is conceded that these two statements are confessions and therefore their admissibility depends upon whether they were voluntarily made.

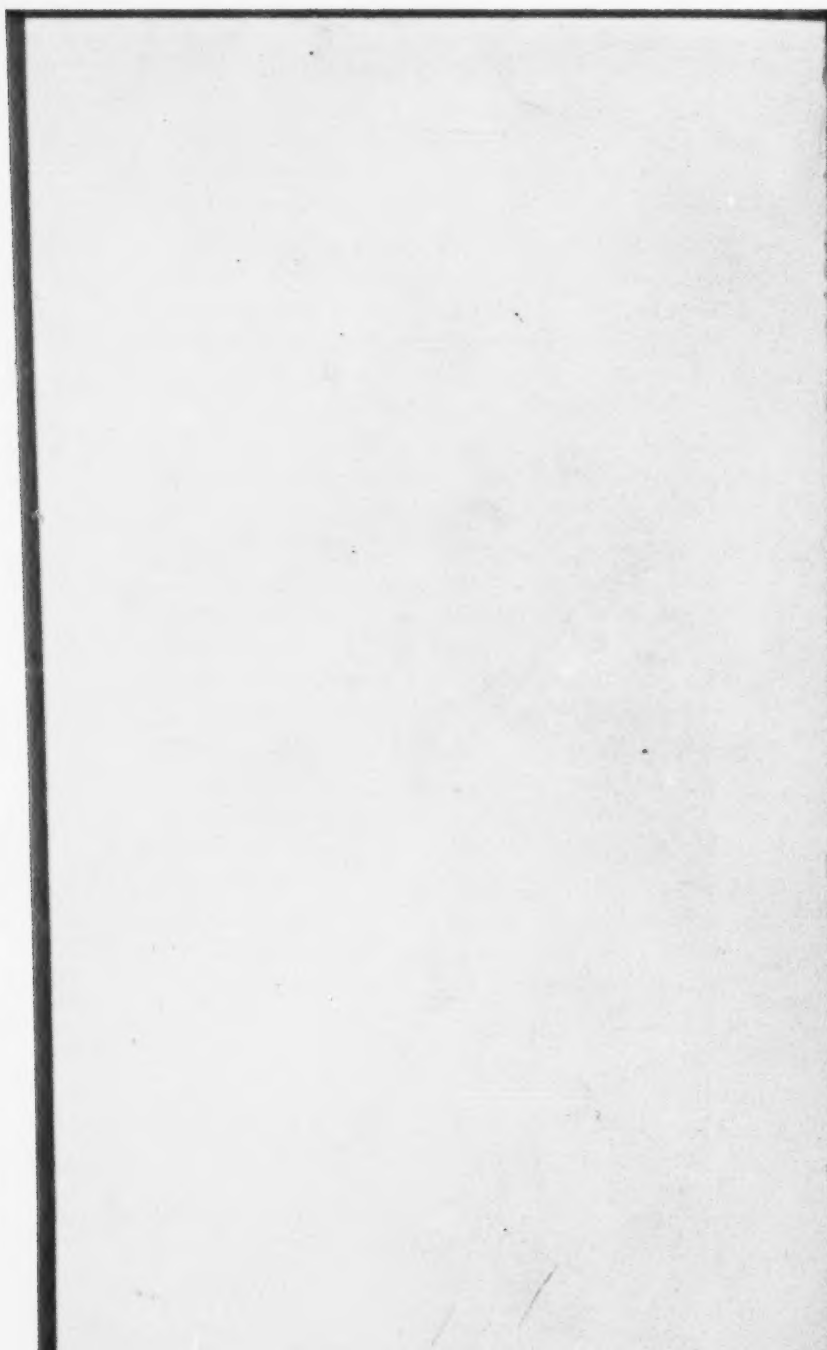
It is respectfully submitted that the opinions and judgments of this Honorable Court in *United States v. Wilson*, 162 U. S., 613, and *United States v. Bram*, 168 U. S., 532, conclusively establish that petitioner's statements and alleged statements were confessions under the Federal rule, and that the decision of the learned Court of Appeals of the District of Columbia in the instant case squarely and openly departs from the rule established by this Honorable Tribunal.

It is further respectfully submitted that the Federal rule is bottomed on reason as well as on authority. There is no serious dispute as to the reason for the rule. As Prof. Wigmore phrases it, confessions were excluded because they were thought to be "under certain conditions tes-

*Footnote to Headings 4 and 5, to be Inserted on Page 35.*

The oral statement of the petitioner made Monday, February 10, 1919, at the Mission House is set forth, over petitioner's objection and exception, in the testimony of Lt. Burlingame at pages 66 and 69 of the Record. For cross-examination, see Record, pages 75, 76, 77. The oral statement is also testified to by Inspector Grant over petitioner's objection and exception, Record, page 81. Cross-examination, see Record, page 91.

The written confession of the petitioner in the form of answers to questions propounded by Lt. Burlingame which was admitted over defendant's objection and exception is set forth in full at pages 106 to 120 of the Record.



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It is further respectfully submitted that the Federal rule is bottomed on reason as well as on authority. There is no serious dispute as to the reason for the rule. As Prof. Wigmore phrases it, confessions were excluded because they were thought to be "under certain conditions testimonial untrustworthy" (Wigmore on Evidence, 1st Edition, Sec. 822), that is to say, likely to be untrue, and it is submitted that this testimonial untrustworthiness adheres as much under the given conditions in exculpatory declarations "tending to

implicate the prisoner in the crime charged" as in "direct confessions."

## II. Petitioner's Confessions Were Not Voluntary.

In considering this question as to each and all of the several confessions made, the Court is respectfully requested to consider, *first*, the petitioner's situation as disclosed in the barest outline in the statement of facts set forth in this brief and abundantly shown by the record, and, *second*, the specific representations from time to time made to the petitioner by the police officers. It is submitted that in the light of the general situation and the remorseless and accusatory questioning of the police officers, each and every one of the confessions made is inadmissible under the doctrine of the *Bram* case, quite irrespective of any specific promise or threat held out to petitioner by the police officers. Petitioner's situation: sick, alone, a stranger in a strange land, held *incommunicado* and ceaselessly accused and questioned, compelled him to talk and in and of itself rendered any and every confession which he made involuntary.

### (A) PETITIONER'S GENERAL SITUATION RENDERED HIS CONFESSIONS INVOLUNTARY.

#### 1. *Petitioner Was Not a Free Agent.*

In the *Bram* case (at p. 561), this Honorable Tribunal states the general situation of the defendant as follows:

"Before analyzing the statement of the police detective as to what took place between himself and the accused it is necessary to recall the exact situation. The crime had been committed on the high seas. Brown, immediately after the homicide, had been arrested by the crew in consequence of suspicion aroused against him, and had been by them placed in irons. As the vessel came in sight of land, and was approaching Halifax, the suspicions of the crew having been also directed to Bram, he was arrested by them and placed in irons. On reaching port, these two suspected persons were delivered to the custody of the police authorities of Halifax and were there held in confinement awaiting the action of the United States consul, which was to determine whether the suspicions which had caused the arrest justified the sending of one or both of the prisoners into the United States for formal charge and trial. Before this examination had taken place the police detective caused Bram to be brought from jail to his private office, and when there alone with the detective *he was stripped of his clothing*, and either whilst the detective was in the act of so stripping him, or after he was denuded, the conversation offered as a confession took place."

And, again, on page 563:

"And these self-evident deductions are greatly strengthened by considering the place where the statements were made and the conduct of the detective towards the ac-

cused. Bram had been brought from confinement to the office of the detective, and there, when alone with him, in a foreign land, while he was in the act of being stripped or had been stripped of his clothing, was interrogated by the officer, who was thus, while putting the questions and receiving answers thereto, exercising complete authority and control over the person he was interrogating. Although these facts may not, when isolated each from the other, be sufficient to warrant the inference that an influence compelling a statement had been exerted, yet when taken as a whole in conjunction with the nature of the communication made, they give room to the strongest inference that the statements of Bram were not made by one who in law could be considered a free agent" (*Bram v. United States*, 168 U. S., 532, at pp. 563-564).

If Bram were not a free agent under the above circumstances, can there be any doubt that the petitioner was not a free agent, situated as he was? Bram, as far as is disclosed by the record, was a well man, examined for a few moments alone by a police officer "in a foreign land" to be sure, for it was at Halifax, but among people enjoying the same "language, institutions and laws." Petitioner was a sick<sup>1</sup> man then about twenty-four years old (R., p. 135), is of an alien race as well as foreign

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<sup>1</sup>The record shows that before coming to Washington petitioner had been sick quite a while with Spanish influenza (R., p. 26). Lieut. Burlingame testifies, referring to the period from Saturday, February



nationality and English is to him a foreign tongue, with which at that time he was only imperfectly acquainted (R., p. 94). Can the mere fact that Bram was for a few moments stripped of his clothing (the only circumstance of hardship in his case which is not found in the instant case) outweigh in its moral effect petitioner's detention by the police, for more than ten days and nights, always under the immediate surveillance of a police officer in uniform, eating and sleeping when permitted to sleep only in such presence, subjected to repeated questionings and accusatory suggestions by the higher police officials, suffering always with a chronic illness, and the weakness resulting therefrom, which, according to Dr. James A. Gannon of the Hospital Staff of the Jail, induced "great fatigue plus great pain," so that the petitioner was so exhausted that "he would really do anything to have the torture stopped" (R., pp. 159, 160).

## (2) *Petitioner "Had to Talk."*

Another vital element in petitioner's general situation was the ceaseless accusatory questioning infinitely greater in degree than that in the *Bram*

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1st, to Friday, February 6th, "he was sick all that time, most of the time in bed" (R., p. 64). Dr. Gannon and Dr. Verbrycke testified that petitioner was suffering from spastic colitis or a contraction of the large bowel (R., p. 158, 164). Dr. Gannon described him on February 13th as "lying in a bunk in the cell, very weak, very much exhausted, very much emaciated" (R., p. 157). Dr. Verbrycke described him about the middle of February as "flat in bed, apparently in a weakened condition" (R., 163, 164).

case, which it is submitted in accordance with the rule laid down in the *Bram* case renders inadmissible all the confessions obtained in this case. Inspector Grant testified:

“ ‘I wanted to straighten out a great many circumstances which pointed to him;’ witness being asked if he wanted to get some talk out of him which would fasten the crime on him, answers, ‘I wanted to clear up this crime, yes, sir;’ \* \* \* wanted to know from him whether he was guilty; wanted him to tell the truth; \* \* \* witness said, ‘We are all firmly of the belief that you know who killed those men;’ sat and watched him and looked at him carefully and for a long time after I would tell him those things and would say, ‘Now, you think it over,’ and stayed right there with him.

“Q. Your purpose in telling him those things was to make him talk?

“A. My purpose was to get him to tell me the truth about this case.

“Q. Answer the question, will you?

“A. Well, he had to talk” (R., pp. 89-90).

Again, Lieutenant Burlingame testified as follows:

“In the room on the third floor early Sunday morning, when Mr. Kelly was pressing defendant for an answer, the reason witness stated to him, ‘Why don’t you answer, why don’t you tell Mr. Kelly what he wants,’ was because defendant had been asked several questions and he was in a rather embarrass-

ing position; if he answered the question he would have to implicate himself and he refused to answer, and witness said to him, 'Why don't you answer the question one way or the other or tell Mr. Kelly what he is asking you;' being asked if witness was not trying to force an answer out of him, witness replied, 'You might put it that way;' witness asked him, 'Why don't you answer? Answer Mr. Kelly's question; \* \* \*'" (R., p. 75).

The corresponding facts in the Bram case are stated in the opinion of this honorable court:

"The detective repeats what he said to the prisoner, whom he had thus stripped, as follows:

" 'When Mr. Bram came into my office I said to him: "Bram, we are trying to unravel this horrible mystery." I said: "Your position is rather an awkward one. I have had Brown in this office, and he made a statement that he saw you do the murder." He said: "He could not have seen me. Where was he?" I said: "He states he was at the wheel." "Well," he said, "he could not see me from there." ' " *Bram v. United States*, 168 U. S., 532, at p. 562.)

And this court comments thereon as follows:

"The fact, then, is, that the language of the accused, which was offered in evidence as a confession, was made use of by him as a reply to the statement of the detective that

Bram's co-suspect had charged him with the crime, and, although the answer was in the form of a denial, it was doubtless offered as a confession because of an implication of guilt which it was conceived the words of the denial might be considered to mean. But the situation of the accused, and the nature • of the communication made to him by the detective, necessarily overthrows any possible implication that his reply to the detective could have been the result of a purely voluntary mental action; that is to say, when all the surrounding circumstances are considered in their true relations, not only is the claim that the statement was voluntary overthrown, but the impression is irresistibly produced that it must necessarily have been the result of either hope or fear, or both, operating on the mind.

"It cannot be doubted that, placed in the position in which the accused was when the statement was made to him that the other suspected person had charged him with crime, the result was to produce upon his mind the fear that if he remained silent it would be considered an admission of guilt, and therefore render certain his being committed for trial as the guilty person, and it cannot be conceived that the converse impression would not also have naturally arisen, that by denying there was hope of removing the suspicion from himself. If this must have been the state of mind of one situated as was the prisoner when the confession was made, how in reason can it be said that the answer which he gave and

which was required by the situation was wholly voluntary and in no manner influenced by the force of hope or fear? To so conclude would be to deny the necessary relation of cause and effect. Indeed, the implication of guilt resulting from silence has been considered by some State courts of last resort, in decided cases, to which we have already made reference, as so cogent that they have held that where a person is accused of guilt, under circumstances which call upon him to make denial, the fact of his silence is competent evidence as tending to establish guilt. Whilst it must not be considered that by referring to these authorities we approve them, it is yet manifest that if learned judges have deduced the conclusion that silence is so weighty as to create an inference of guilt, it cannot, with justice, be said that the mind of one who is held in custody under suspicion of having committed a crime, would not be impelled to say something, when informed by one in authority that a co-suspect had declared that he had seen the person to whom the officer was addressing himself, commit the offense, when otherwise he might have remained silent, but for fear of the consequences which might ensue; that is to say, he would be impelled to speak either for fear that his failure to make answer would be considered against him, or of hope that if he did reply he would be benefited thereby." (*Bram v. United States*, 168 U. S., 532, at pp. 562-563.)

Like *Bram*, but in a much greater degree than *Bram*, petitioner "had to talk." It was not "left to the prisoner a matter of perfect indifference whether he should open his mouth or not" (*Reg. v. Baldry*, 1852, 2 Den. C. C., 430, at p. 442, quoted with approval in *Bram v. United States*, 168 U. S., 532, at 554), and it is respectfully submitted that to conclude that the confessions which were thus extracted from him were "wholly voluntary and in no manner influenced by the force of hope or fear" would, in the language of this honorable court in the *Bram* case, "be to deny the necessary relation of cause and effect" (168 U. S., 563).

The following cases, both Federal and State, are relied on not only as in accord with the general principles of law laid down by this honorable tribunal in the *Bram* case, but as giving correct scope and sway to these principles in their application to complicated and varying states of facts arising under the "sweating" or "third degree" tactics which the police officers are showing a tendency to adopt, and which is beginning to receive the unfavorable notice of the State legislatures:

#### *Federal Cases.*

*Purpura v. United States* (1919), Circuit Court of Appeals, Fourth Circuit, 262 Federal, 473:

The defendant was charged with stealing a package from the postoffice and made a confession which was introduced in evidence against him on



his trial. This confession was obtained after he had been taken in charge by five postoffice inspectors held for 24 hours *incommunicado* and had been compelled to sleep in the room with one of the inspectors, and after they told him that they believed him guilty and had evidence which made it look bad for him, etc. The facts in this case so nearly resemble those in the instant case, except for the comparatively brief time the defendant in the Purpura case was held *incommunicado* and questioned by the officers, that it is thought best to set them out in full as given in the official statement of facts.

“However, another investigation was instituted about October 18th, by G. G. Himmelwright, James B. Robertson, John S. Lemen, W. Chambers, and W. D. Kahn. These were well-trained inspectors of long experience. On the morning of the 18th, just as the defendant was entering the post office building in Norfolk, Inspector Kahn, one of the five named, requested Purpura to accompany him to the office of Inspector Himmelwright about 11 o'clock Friday morning, October 18th, and was detained continuously in the presence of these inspectors until the following day at or about the same time. Mr. Himmelwright, testifying for the government, says:

“Q. So for 24 hours he was in charge of post office inspectors? A. I do not know the number of hours, but approximately, yes. I would say from between 11 and 12



o'clock on the morning of the 18th until about the same time the next day. Q. And spent the night with them? A. Yes; with Post Office Inspector Kahn, I think.' Inspector Robertson, testifying on behalf of the Government, states: 'I recollect that distinctly, some time during the afternoon, the boy remarked that he had not had anything to eat; I think he said he had not had his breakfast.'

"It appears that, in the course of the interview between the inspectors and the defendant on the 18th of October, he made a written statement denying the knowledge of the package, but after making this statement he was not permitted to return home; the reason assigned by the inspectors being that they desired to interview Mr. Casper and his daughter, whose names had been mentioned in the affidavit the defendant had made before the inspectors on the 18th, and that they did not desire him to depart until they could be interviewed. On the early morning of the 19th of October, while the defendant was dressing in the room with Inspector Kahn, which room they had both occupied at the Neddo Hotel, the subject of the package was again brought up by Mr. Kahn, who testified as follows: 'In the room, before I left, while we were dressing, I said to Purpura: "Miss Casper has contradicted every statement practically which you have made in your affidavit to-day, and which puts you in a pretty bad light. While you have denied any gift to her, she has stated to us that you had bought her a ring,

a plush dress, suit, and trunk, and various articles of clothing."

"This conversation took place before breakfast on the morning of the 19th, and the same witness proceeds to testify as follows to the subsequent occurrences: 'Q. You had her written statement denying the statements Purpura had made to you? A. Yes, sir. That was about all that was said; that it looks pretty bad; and when we got him in the room we sat possibly 15 minutes, not much more than that. Robertson, Himmelwright, and he and I were there. He asked me to step outside. I stepped out of the door, and a little to the side of the door, and we talked. He first said, "Can I withdraw that statement I made yesterday?" I said, "No; you cannot withdraw it, but you can make any additional statement you wish to make." That was the affidavit he had made before Lemen and Robertson on the 18th. I told him that I was convinced that he had stolen this package, and about this way, and he said, "Yes; I know I did it; I hate like the devil to admit it."

"The defendant and the witness then returned to Mr. Himmelwright's office, and the statement which was relied upon by the Government was then written out by Inspector Chambers, with various suggestions from Inspector Kahn. Inspector Kahn, in testifying, said: 'He showed no objection whatever to writing the statement. He resented nothing that we did' " (p. 474).

The case was reversed on account of the confession obtained under the foregoing circumstances.

Pritchard, J., reading the unanimous opinion of the court after citing 2 Hawkin, Pleas of the Crown, and Russell on Crimes, said:

"The case of *Bram v. United States*, 168 U. S., 532, 18 Sup. Ct., 183, 42 L. Ed. 568, is very much in point—indeed, we think it is practically on all fours with the case at bar" (p. 476).

The court proceeds to state the facts in the *Bram* case and the holding of this honorable tribunal therein and refers to the case of *Sorenson v. United States*, 143 Fed., 820. The court then summarizes its holding in the case as follows:

"In this instance, as we have stated, the testimony shows that defendant for a period of almost 24 hours, excluding the time he was asleep, was continuously plied with questions by these five inspectors and all manner of questions propounded to him about the circumstances under which the package in question was lost. It further appears that he was given no rest during this period, except when asleep; that he endeavored to communicate with friends for the purpose of employing counsel, and that he spent the night at the hotel under protest.

"Under the circumstances, according to the testimony of the inspectors, we think this alleged confession is clearly inadmissible \* \* \*" (p. 477).<sup>1</sup>

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(<sup>1</sup>) Prof. Wigmore comments on this case as follows: "1919, *Purpura v. U. S.*, 4th C. C. A., 262 Fed., 473 (larceny by a post office employee; 'the case of *Bram v. U. S.* \* \* \* is practically on all

In the following Federal cases among others the case of *United States v. Bram* has been cited and followed:

*Sorenson v. United States* (1906), Circuit Court of Appeals, Eighth Circuit, 143 Federal Reporter, 820.

The defendants were convicted for the burglary of the post office. Various confessions introduced on behalf of the Government. The court in the matter of authorities confined itself almost entirely to the *Bram* case, saying:

"The learned, exhaustive, and authoritative declaration of the rule upon this subject and of the appropriate practice in its application, which is found in the opinion of the Supreme Court delivered by Mr. Justice White, in *Bram v. U. S.*, 168 U. S., 532, 18 Sup. Ct., 183, 42 L. Ed., 568, renders any further discussion of the law of this case futile. A few excerpts from that opinion may be instructive" (p. 823).

\* \* \* \* \*

After various quotations from the *Bram* case the opinion concludes:

"The confessions in the case before this court were made to an inspector while the defendants were prisoners under his con-

fidence with the case at bar; it was then nearly twenty-five years since the *Bram* decision; how much longer will that misguided and unrepudiated opinion continue to cloud the reputation of the Federal Supreme Court?)" (Wigmore on Evidence, 2d Edition, Sec. 832, Note 1, p. 157.)

trol. He stated to one of them that he had an absolutely good case against him, and to both that the thing for them to do was to plead guilty and to throw themselves on the mercy of the court, and the matter would probably be overlooked in the State court. Tried by the decision of the Supreme Court in *Bram's Case*, either of these statements was 'legally sufficient to engender in the mind of the accused hope or fear in respect of the crime charged,' and each of them rendered the subsequent confession involuntary and inadmissible in evidence" (p. 824).

*United States v. Armour & Co.*, District Court, N. D. Illinois, 1906, 142 Fed., 808, at 825.

*Smith v. Township of Au Gres, Michigan*, 1906, Circuit Court of Appeals, Sixth Circuit, 150 Fed., 257, at 264.

*United States v. Wilson et al.*, 1908, Circuit Court, S. D. New York, 163 Fed., 338, at 339.

*Harold v. Territory of Oklahoma*, 1909, Circuit Court of Appeals, Eighth Circuit, 169 Fed., 47, at 48.

*Hauger v. United States*, 1909, Circuit Court of Appeals, 4th Circuit, 173 Federal, 54, at 58.

*Shaw v. United States*, 1910, Circuit Court of Appeals, Sixth Circuit, 180 Fed., 348, at 355.

*Mangum v. United States*, 1923, Circuit Court of Appeals, Ninth Circuit, 289 Federal, 213.

In two Federal cases, *United States v. Bram* has been distinguished.

*Fitter v. United States*, 1919, Circuit Court of Appeals, Second Circuit, 258 Federal Reporter, 567.

*Murphy v. United States*, 1923, Circuit Court of Appeals, Seventh Circuit, 285 Federal Reporter, 801.

#### *State Cases.*

*People v. Brockett* (1917), 195 Michigan, 169:

Defendant was convicted of assault with intent to rob, being armed with a dangerous weapon. Defendant who was 19 years old and who had never been arrested before was arrested on a Tuesday and "put in a cell, the floor of which was cement, and the only furniture in it was a stool" and kept there until "Thursday about noon," meanwhile being frequently taken to the office of the chief of police for examination. The chief of police himself testified:

"I asked this boy questions a number of times. I would keep asking him questions. I don't remember just how I asked certain questions. In our method we have to ask questions if we want to get the truth out of them" (p. 172).

Defendant was then taken to the office of the chief of police and in the presence of a number of

officials questioned, questions and answers being taken down and signed and sworn to by him. This sworn statement recited that it was made of his free will and not in response to promises, etc. Defendant on the other hand testified he was told by an officer that he "would get clear if I (he) told the truth." Without reference to the conflict of evidence as to any specific promise the court said:

"A careful reading of the record in this case has satisfied us that the so-called confession of the defendant should not have been received in evidence; or if received in evidence in the first instance, after it had appeared by the uncontradicted testimony of the defendant that he had been confined in the manner testified to by him for the length of time there stated, and had been persistently importuned by the officers to make a confession, the same should have been withdrawn from the consideration of the jury. We need only to cite our own cases upon this point. *Flagg v. People*, 40 Mich., 706; *People v. Wolcott*, 51 Mich., 612 (17 N. W., 78); *People v. Stewart*, 75 Mich., 21 (42 N. W., 662); *People v. Clarke*, 105 Mich., 169 (62 N. W., 1117); *People v. Prestidge*, 182 Mich., 80 (148 N. S., 347); *People v. McClintic*, 193 Mich., 589 (160 N. W., 461)" (p. 176).

The court then proceeds to quote from the Mississippi case of *Ammons v. State*, and it is believed that despite the fact that *Ammons v. State* was a case where the prisoner was confined in a literal



"sweat box," which was kept entirely dark, in addition to being subjected to "importunate questioning" (charge of Judge Gould in the instant case, R., p. 173), as in the instant case, the language of the court in the Mississippi case and in particular its waiving the requirement of technical threats and promises when the same result is reached by other means is indeed "instructive," as the learned court in the *Brockett* case remarks. The reference to and quotation of the *Ammons* case in the *Brockett* case is as follows:

"An instructive case is that of *Ammons v. State*, 80 Miss., 592 (32 South., 9; 92 Am. St. Rep., 607), reported with very ample notes in 18 L. R. A. (n. s.) at page 768. It was there held distinctly that the confession by a prisoner after being confined for several days in a 'sweat box' is not admissible in evidence against him, although no threats or offers of reward were made to coerce, and he was merely told that it would be better for him to tell the truth. After describing the sweat box, the court said:

"The prisoner was allowed no communication whatever with human beings. Occasionally the officer, who had put him there, would appear, and interrogate him about the crime charged against him. To the credit of our advanced civilization and humanity it must be said that neither the thumbscrew nor the wooden boot was used to extort a confession. The efficacy of the sweat box was the sole reliance. \* \* \* The officer, to his credit, says he did not threaten his

prisoner, that he held out no reward to him, and did not coerce him. Everything was "free and voluntary." He was perfectly honest and frank in his testimony, this officer was. He was intelligent, and well up in the law as applied to such cases, and nothing would have tempted him, we assume, to violate any technical requirement of a valid confession—no threats, no hope of reward, no assurance that it would be better for the prisoner to confess. He did tell him, however, "that it would be best for him to do what was right," and that "it would be better for him to tell the truth." In fact, this was the general custom in the moral treatment of these sweat box patients, since this officer says, "I always tell them it would be better for them to tell the truth, but never hold out any inducement to them." He says, in regard to the patient, Ammons, "I went to see this boy every day, and talked to him about the case, and told him it would be better for him to tell the truth; tell everything he knew about the case." This sweat box seems to be a permanent institution, invented and used to gently persuade all accused persons to voluntarily tell the truth. Whenever they do tell the truth—that is, confess guilt of the crime—they are let out of the sweat box. Speaking of this apartment, and the habit as to prisoners generally, this officer says: "We put them in there (the sweat box) when they don't tell me what I think they ought to." This is refreshing. The confession was not competent to be received as evidence. 6 Am. & Eng. Enc. of

Law, p. 531, note 3; *Id.*, p. 550, note 7; *Hamilton v. State*, 77 Miss., 675 (27 South., 606); *Simon v. State*, 37 Miss., 288. Defendant, unless demented, understood that the statement wanted was confession, and this only meant release from this "black hole of Calcutta." Such proceedings as this record discloses cannot be too strongly denounced. They violate every principle of law, reason, humanity and personal right. They restore the barbarity of ancient and medieval methods. They obstruct, instead of advance, the proper ascertainment of truth. It is far from the duty of an officer to extort confession by punishment.'

"The case was reversed upon that sole ground. That such confessions are obtained by duress, see *State v. Miller*, 61 Wash., 125 (111 Pac., 1053), reported with notes in 1912 B, Am. & Eng. Ann. Cas., 1053; *People v. Loper*, 159 Cal., 6 (112 Pac., 720), reported in 1912 B, Am. & Eng. Ann. Cas., 1193; *Commonwealth v. McClanahan*, 153 Ky., 412 (155 S. W., 1131), reported in 1915 C. Am. & Eng. Ann. Cas., 132." (*People v. Brockett*, 195 Mich., 169, at pages 177-179.)

*State v. Thomas* (1913), 250 Mo., 189:

This case is inserted notwithstanding the fact that the court finally held a confession, obtained after the defendant had been arrested and held thirty-six hours, during which time he had been repeatedly questioned by the police, was not inadmissible, no specific threat or promise having been

established, because of the language held by the court and the clear intimation that prolonged questioning under arrest without more might render a confession thereby obtained inadmissible. The case was as follows:

Defendant was convicted of murder in the first degree. A written confession of the defendant was admitted over his objection. Obtained by the chief of police of Kansas City, who testified that he made no threats, offered no violence, and held out no hope of immunity or leniency, but admonished him that

"if there were others implicated in the killing of Johnson not to bear all the blame himself but give the name of the other guilty parties" (p. 205).

"The testimony of Chief Griffin showed that defendant had been all of one night and part of two days in the custody of Captain Casey" (206).

\* \* \* \*

"Captain Casey questioned defendant twice before taking him to Chief Griffin" (208).

Griffin testified that "he had to call defendant three or four times."

The court held:

"When the youth of the defendant is considered, the fact that he had not previously been arrested, and the amount of interrogating required to bring about the confession, we are almost justified in holding, as a matter of law, that the confession was not voluntary" (p. 210).

Nevertheless the court finally upheld the admission of the evidence, saying:

"However, officers in trying to secure confessions or admissions from a party suspected of crime should not forget that they have no legal right to *compel* a person under arrest to make any statement whatever—that no one can be compelled to furnish evidence against himself, and where the interrogatories are persisted in to an unreasonable extent, thereby producing mental anguish on the part of the accused, the confession or admission thus obtained should be wholly rejected as involuntary, the same as if it had been obtained by the infliction of physical torture" (p. 211).

"In discussing this subject Mr. Underhill in his new work on Criminal Evidence, section 140, says:

"The practice of eliciting a confession by putting question after question to the accused is clearly not conducive to the procurement of truth, and the mode in which the confession was elicited may always be considered by the jury to determine whether they shall believe it.

"This is well illustrated by the methods employed by police officers and others in practicing upon the accused after his arrest what is known in police circles as the "third degree." This usually consists in subjecting the accused, after his arrest and while in custody, to a continuous and rigid examination accompanied with intimidation by threats and other means. The length of

this process and the manner of its application depend largely upon the character of the official who administers it and upon that of the accused to whom it is administered.

“Where, on the one hand, the police official is sufficiently hardened and brutalized by his past experience and the accused is a determined and courageous person, it is likely to continue for some lengthy period without results, but where the accused is weak and nervous or feeble in mind or body, the carrying out of this method of modern torture will generally result in producing statements in answer to leading questions which can readily be twisted into a confession.

“The worthlessness as evidence of such statements needs but to be stated in order to be appreciated. Their probative force, or rather lack of force, is well recognized by all who have had any experience of human nature” (pp. 212, 213).

“The fact that defendant in this case was a boy not over seventeen years of age, and was subjected to almost continuous interrogatories during twenty-four hours was almost sufficient to justify a court in rejecting the statement and admissions as involuntary. The obnoxious practice of extorting confessions from prisoners suspected of crime has become so common that some States have enacted statutes declaring such confessions inadmissible unless the defendant be first warned that they will be used to convict him of crime (*Parker v. The State*, 46 Tex. Crim., 461; l. c., 470) (214).

The case was, however, reversed

“For the error of the trial court in improperly commenting upon the written confession of defendant in its instruction, \* \* \* ” (p. 218).

*State v. Powell* (1914), 258 Mo., 239:

In this case, the Supreme Court of Missouri applied the doctrine enunciated in *State v. Thomas* in a case where defendant was sweated for about seven hours, in the course of which the police officers said that it would be “best for him to tell the truth.”

Defendant, a colored man 24 years of age, was convicted of murder in the first degree. At the trial a signed confession of the defendant was admitted over his objection and exception. The circumstances under which this confession was obtained are stated by the court as follows:

“He was arrested and locked up the day following the robbery, and on the second day was taken to the office of Edward B. Stone, Captain of Police, and questioned by Captain Stone and eight other police officers and detectives regarding his knowledge of and complicity in the robbery and murder.

“With one exception the witnesses agree that the interrogation of defendant began about two p. m. Sunday afternoon and continued until eleven p. m. that night with very slight intermissions. Defendant was interrogated alternately by the nine officers and detectives, and at eleven p. m. consented



to confess. His confession, written on a typewriter, was completed and signed between twelve and one a. m. that night" (p. 246).

\* \* \* \* \*

"Captain Stone, upon cross-examination, further stated that he had to draw the confession from defendant piece by piece; that he questioned him at length and severely about other parties implicated in the crime. Asked if he had to 'worm' the confession out of defendant, witness Stone replied: 'I had to work hard.' Asked whether he told defendant that it would help him to tell the truth, Captain Stone replied that he did so several times. He also stated that defendant did not seem to be nervous, but that 'he appeared to be tired and worn out from the strain'" (p. 248).

(It would seem that as in the instant case Captain Stone found that obtaining the defendant's confession was "like working low-content gold ore" (R., p. 100).

*Held*, that the confession should have been excluded as involuntary. The court comments upon the language of the confession as follows:

"The last paragraph of the confession, to-wit, 'I make this statement of my own free will, without any threats or promises being made and knowing that it will be used against me if I am prosecuted,' looks rather suspicious. It is highly improbable that

such a clause would have been inserted if some hope had not been directly or indirectly held out to defendant that he would not be prosecuted.

"The officers testified that defendant dictated all of the confession, except the first two or three lines thereof, but this concluding paragraph is so unusual and so unlike the other language used by defendant in giving his testimony, I am impressed with the idea that it was suggested by some of the officers in an effort to have the defendant brand as voluntary a confession which is not entitled to be so regarded" (p. 250).

This case came a second time before the Supreme Court of Missouri in 1915, 266 Mo., 100. The State again introduced the defendant's confession on the trial on the theory that a somewhat different showing had been made as to the circumstances under which it was obtained. It was again admitted by the lower court. The Supreme Court of Missouri held, however, that:

"For a casual reading of the present record discloses that the identical vices for which we before held the alleged confession to be inadmissible because not voluntary, inure in the one before us. Indeed, it is fairly patent that if legal defects, arising from matters of affirmative proof, existed before in laying the foundation of voluntariness in order to render the confession admissible in the former trial, these defects could not be sworn away upon this trial,

absent perjury. Nor in our view have they been so sworn away. Error before arose from the substantial fact that nine officers, for the most part police, collectively, or individually, or in pairs or trios, 'sweated' defendant continuously from two o'clock in the afternoon till one o'clock next morning, at which time, after the police captain Stone and others of the nine apparently in Stone's presence, had told defendant it would 'be best for him to tell the truth,' he made and signed the alleged confession in evidence. Upon this record, as upon the former, we do not credit the statements of the defendant that he was beaten and maltreated; for on this point he is overwhelmed and utterly discredited by countervailing testimony. But here upon the instant record the other identical infirmities of foundation appear affirmatively from the testimony of witnesses for the State" (pp. 106-107).

*People v. Loper* (1910), 159 Cal., 6:

Defendant was convicted of murder after examination by the sheriff, district attorney and others, which his counsel characterizes as "a relentless sweating process" (p. 14). This process appears to have been transcribed verbatim.

"After the searching inquiry of the sheriff, district attorney, and deputy district attorney had closed, defendant was locked up in solitary confinement until the following morning, when he informed the sheriff that he desired to tell everything" (p. 15).

Extended quotations from the examination of the defendant are given on pages 15 to 17, which make very interesting reading in the light of the record in this case. The court held that the admission of the confession was reversible error. In the course of its opinion it refers to the *Bram* case as follows:

"In *Bram v. United States*, 168 U. S., 532 [18 Sup. Ct., 183], the leading authorities upon the subject of confessions are collated and discussed masterfully in the opinion of the court delivered by Mr. Justice White. In that opinion he says" (p. 18):

Here follows a long quotation from the opinion in the *Bram* case.<sup>1</sup> ~~Professor Wigmore comments on this case as follows:~~

*People v. Quan Gin Gow*, (District Courts of Appeal) 23 Cal. App. 507.

In this case the Court held a confession involuntary and reversed the decision of the lower court although no threats were used or promises held out, because the confession was the result of continuous questioning and therefore not voluntary. The case is authority to the effect that the confession in the

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(<sup>1</sup>) Professor Wigmore comments on this case as follows: "California: 1910, *People v. Loper*, 159 Cal., 6: 112 Pac., 720 (the 'sweating process'; confession excluded; but what does the opinion mean by exhuming the historical errors of the majority opinion in *Bram v. U. S.*, and offering them as law? That case should be forgotten)\*" (Wigmore on Evidence, 2nd Edition, Sec. 851, note 5, p. 198.)

present case should have been excluded simply on the ground of the continuous "importunate questioning." In the course of its opinion, the Court said:

"The defendant, a Chinaman, was brought, while under arrest, alone, and unaccompanied by friends or counsel, into the office of the detectives and there subjected to a vigorous oral examination. At first he refused to answer any questions and his silence continued, for from 5 to 10 minutes. The questions were persisted in; the same interrogatory designed to draw from him the admission that he had fired the shot that killed Chin Hoy Hing, was repeated many times. At one point he said he did not 'savey' or understand. He figited and squirmed in his chair and appeared afraid of something. Finally he gave the statement set forth in the foregoing. It seems quite clear from the evidence of the conditions which surrounded the defendant at that time that he did not desire to make a statement. While no physical force was used and neither threats nor promises were made, there can be no doubt at all but that the repeated questioning of the officers, like the constant dropping of water upon a rock, finally wore through his mental resolution to remain silent. Admittedly, his refusal at first to answer incriminating questions gave evidence of a desire to make no statement. When did his unwillingness vanish and a desire to talk succeed it? Not after he had been given any period of time for reflection,

for his inquisitors allowed him none. The examination was persisted in until a response was forthcoming, and under these circumstances it must be said that the responses appear to have been unwillingly made and as a direct result of continued importuning" (p. 511).

The Court then quoted at length from *United States v. Bram, supra*, and added:

"The error of the court in admitting the confession, under the circumstances shown here, was highly prejudicial" (p. 513).

The following case, which was decided under the Kentucky "sweating statute," is included not of course as an authority on the common law as administered in the Federal courts, but as tending to show that, so far from the *Bram* case being "misguided" and continuing "to cloud the reputation of the Federal Supreme Court" (Wigmore on Evidence, 2nd Edition, Sec. 832, note 1, p. 157) when it "should be forgotten" (*ibid*, Sec. 851, note 5, pp. 199-200), the *Bram* case is not only bottomed on the authorities but is in harmony with a sound and far-seeing public policy which appeals to legislators as well as judges.

*Commonwealth v. McClanahan* (1913), 153 Ky., 412:

This case was decided under the Kentucky sweating statute which is quoted by the court in its opinion as follows:



“(1) That what is commonly known as ‘sweating’ is hereby defined to be the questioning of a person in custody charged with crime in an attempt to obtain information from him concerning his connection with the crime or knowledge thereof, after he has been arrested and in custody, as stated, by plying him with questions or by threats or other wrongful means, extorting from him information to be used against him as testimony upon his trial for such alleged crime.

“(2) It shall be unlawful for any sheriff, jailer, marshal, constable, policeman or other officer, or any peace officer, or any person having in his custody any person charged with crime, to sweat such person or permit any other person so to do, while such prisoner is in charge of such officer or in the custody of the law, charged with an offense.

“(3) That no confession obtained by means of sweating as defined herein, shall be permitted as evidence in any court of law in this State, but shall be deemed to have been obtained by duress, if it be shown that such confession was made after the arrest of the party charged with crime, and while he was in the custody of the law” (p. 415).

The defendant was convicted of housebreaking but the lower court excluded evidence of a confession made by him, and the State took an appeal against this ruling.

It appears from the opinion of the court that



after the defendant's arrest he was questioned by the officers of the law in the detectives' room; that when defendant made certain statements he was confronted with the contradiction of confederates and cross-examined, and that he broke down under this cross-examination and confessed. No promise or threats appear to have been used. Held that the Kentucky sweating act was constitutional and reasonable; that the examination whereby the confession in question was obtained came within the inhibition of the statute. The court observes on this opinion:

"It will be observed that the 'sweating' prohibited by the act may be done by the mere questioning of the person under arrest charged with crime concerning his connection therewith or knowledge thereof, if it be done for the purpose of extorting from him (*i. e.*, inducing an unwilling or involuntary giving of) information to be used against him on his trial for such alleged crime. In enacting this statute it was the purpose of the legislature to strike a blow at the modern methods, less harsh than threats, intimidation or promises of benefits to be conferred, condemned by the common law, that are employed by detectives and arresting officers to obtain information and confessions from those suspected of guilt or implicated in crime.

"Just as three centuries ago the use of the rack and other tortures for compelling confessions of guilt were abolished in England,

there is now a tendency to do away with the 'sweat-box' and other like methods that are calculated to make such confessions, other than spontaneous" (p. 416).

The court holds that the lower court rightly excluded the confession in question.

### 3. *These General Considerations Apply to All the Confessions.*

If it be suggested, as in the Government's brief below, that even if the earlier confessions were excluded as involuntary, still the written confession signed on February 12th was voluntary and sufficient to convict, it is submitted that the answer is two-fold: *First*, there was one general situation existing with a cumulative effect; and, *second*, it is impossible to tell the weight attached by the jury to the various confessions.

First, during the six days of questioning ending Thursday, February 6th, petitioner had withstood all efforts to force a confession as to a crime of which he repeatedly maintained his innocence; on Friday, February 7th, the first confession, in regard to the man who went to the bank, was obtained in the manner already outlined; this was used as a wedge the following night, Saturday, February 8th, at the Mission House, to drag from the ill petitioner in the course of the all-night coercion, the alleged confession in regard to the handwriting on the check stub (R., pp. 98-99); the next evening, Sun-

day, February 9th, in his cell at the precinct station, responding to the threats, inducements and promises of Grant, and realizing therefrom and from the unremitting efforts of the police for the past eight days the hopelessness of surcease unless he implicated himself, he confessed, in direct response to Grant's specific statements and the representations (whatever they were) of K. S. Wang, that he was present at the killing, and even then, fighting still to obtain a way out, said Chen did it; the next morning, Monday, February 10th, having again been taken to the Mission House, still confronted with questioning officers, accused pointblank of having put Chen in his own place, and thus impelled by the inference of guilt resulting from silence (referred to in the *Bram* case) to make a further statement, the influence of the previous days being thus continued, pushing him back from point to point, wholly and indisputably against his own volition, and being already involved by the confession obtained on Sunday, he confessed that he killed Wu, and explained in answer to questions how it was done based upon the suggestions of the officers and the continuous "rehashing" of the case. The full confession, which the police had determined to extort from him had then and in such manner obtained, and the next morning, Tuesday, the 11th, at the police station, it was merely reduced to question and answer form, stenographically recorded, "as he had given it the day before" (R., p. 70); on Wednesday, February 12, at the

jail, the petitioner not being well enough to read it, the confession was read to him, and he said it was "practically his story" (R., p. 70), and signed it. The next day Dr. Gannon found him worn and emaciated in his cell, and ordered him removed to the Red Cross room. It is clear that the last two steps of this continuous campaign, that is, the reducing to writing and signing, were not necessary for the purposes of the police, and were resorted to merely to facilitate the proof on the trial. It is equally clear that all the confessions were the result of the ~~coerced~~ coerced and suggestions of the police officials. Their influence was never removed, and in the nature of things the longer it continued the weaker the resistance became, until at the end the petitioner was helpless. There can be no question, as a matter of law, that when once an improper influence has been exerted with the view and for the purpose of inducing or extorting a confession it must be shown to have been removed before any subsequent confession may be said to be voluntary.

*Second*, all the separate confessions having been offered before the jury as material evidence to secure a conviction, and being admissible only on that theory, if any of them was involuntary, prejudicial error resulted from its admission. To illustrate this, the jury were entitled to believe the statement of petitioner made on the witness stand, where (R., p. 154), in reply to the court's suggestion before the jury that he had so signed his death warrant (petitioner states), that he had signed it

not because it was true but because he would let them, the police, go ahead and find out if it were true, indicating his belief that the statements in the confession had to be proved to be true by independent evidence; thus the jury on this one ground may have disregarded the written confession, even if it could by any possibility be said to be voluntary, and on the further ground that it was contradicted in various respects by the physical facts in the record; yet they had the right to convict him because of any one, or more, of the oral confessions. On what evidence the jury based its conviction, no one can say.

*(B) Specific Statements Implying Threats or Promises Were Made to Petitioner by Persons in Authority.*

It is now desired to direct the attention of this tribunal to certain considerations growing out of specific statements made to petitioner on the all-important occasion in the police station late Sunday afternoon after petitioner had been charged with murder. This is the occasion as to which Inspector Grant was able, particularly on his cross-examination, to throw the most light upon the methods by which the prisoner's confession was obtained. Being asked similar questions in regard to another occasion, he responded, "It is one of the hardest things for me to do, to remember those conversations" (R., p. 84). On the occasion in ques-

tion, Inspector Grant testifies that he saw the petitioner about 6 or 7 o'clock in the evening, this being the day after the all-night questioning at the Mission House. Grant, Burlingame and Kelly, all detectives, and a Chinese named K. S. Wang, were there, and "there is where this man said that he wanted to tell his story, and he told me about seeing all three of these men killed" (R., p. 80).

"Sunday evening at the mission house' witness was appealing to the good side of his nature; asked him several times to tell witness the truth about this thing; finally said to him, 'If you are guilty and your brother is innocent, now is the time to tell it; I want to know;' then it was he admitted seeing all three men killed; his brother was then in a cell in the back part of the building; \* \* \* appealed to the better side of his nature; 'told him that things looked pretty black for him, that we had talked this thing over and the developments showed me that he knew more about the crime than he was telling, and I asked him for the truth;' told him 'the investigation so far looks pretty black for you; tell me the truth;' \* \* \* went over practically and rehashed all the case as far as they had learned about it and related all the circumstances against him; told him a lot of things, but never offered any inducement, because witness has had too much experience in that line.

"Q. And this was what you meant by saying that you appealed to the better side of

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(<sup>1</sup>) Should be "station house." See R., p. 89, 102, etc.



his nature—by telling him that the investigation looked awfully black and *that he had better tell you the truth?*

“A. Yes; I thought if he told the truth about it, it would be the proper thing for him to do under the circumstances” (R., pp. 80-81.) (*Italics supplied.*)

In support of the general proposition that these appeals to the prisoner's better nature, combined with these attempts to convince him that “things look pretty black for him,” and that the officers were convinced he was guilty and was concealing his crime, rendered the petitioner's confessions thereby obtained inadmissible, the following passages from the opinion of this Honorable Tribunal in the *Bram* case are invoked:

“What further was said by the detective? ‘Now look here, Bram, I am satisfied that you killed the captain from all I have heard from Mr. Brown. But,’ I said, ‘some of us here think you could not have done all that crime alone. If you had an accomplice, you should say so, and not have the blame of this horrible crime on your own shoulders.’ But how could the weight of the whole crime be removed from the shoulders of the prisoner as a consequence of his speaking, unless benefit as to the crime and its punishment was to arise from his speaking? Conceding that, closely analyzed, the hope of benefit which the conversation suggested was that of the removal from the conscience of the prisoner of the merely moral weight result-



ing from concealment, and therefore would not be an inducement, we are to consider the import of the conversation, not from a mere abstract point of view, but by the light of the impression that it was calculated to produce on the mind of the accused, situated as he was at the time the conversation took place. Thus viewed, the weight to be removed by speaking naturally imported a suggestion of some benefit as to the crime and its punishment as arising from making a statement." (*Bram v. United States*, 168 U. S., 532, at pp. 564-565.)

And again a little earlier in its opinion in the *Bram* case this honorable tribunal uses language which it is submitted is fairly applicable to defendant's situation at the Police Station Sunday afternoon when in response to Inspector Grant's "importunate questioning", to use the language of the learned trial court in this case (R., 173) the defendant confessed that he was present at the scene of the crime and saw one Chen commit the murders. The passage in question is as follows:

"\* \* \* To communicate to a person suspected of the commission of crime the fact that his co-suspect has stated that he has seen him commit the offence, to make this statement to him under circumstances which call imperatively for an admission or denial and to accompany the communication with conduct which necessarily perturbs the mind and engenders confusion of thought, and then to use the denial made by the per-

son so situated as a confession, because of the form in which the denial is made, is not only to compel the reply but to produce the confusion of words supposed to be found in it, and then use statements thus brought into being for the conviction of the accused. A plainer violation as well of the letter as of the spirit and purpose of the constitutional immunity could scarcely be conceived of." (*Bram v. United States*, 168 U. S. 564.)

But without resorting to these general considerations, it is submitted that the language above quoted includes at least two specific statements, one of which renders the resulting confession inadmissible under almost all the authorities, and the other renders it inadmissible according to the holdings of most courts, including this Honorable Tribunal.

Reference is made first to the statement:

"If you are guilty and your brother is innocent, now is the time to tell it; I want to know" (R., p. 80).

Short of an absolute and direct promise or threat, how could a promise or a threat by a person in authority be more clearly implied than by this statement under the circumstances in which it was made?

The other is Inspector Grant's admission under cross-examination that he told petitioner he had better tell the truth:

"Q. And this was what you meant by saying \* \* \* that he *had better tell you the truth?*

"A. Yes; I thought if he told the truth about it, it would be the proper thing for him to do under the circumstances" (R., p. 81.) (*Italics supplied*).

The Government contends in its brief below (p. 32) that the record does not show that Grant said that it was "better" for petitioner to tell the truth; merely that he told him "to tell the truth". But it is submitted that Inspector Grant's examination and cross-examination on this point taken in their entirety show that both technically and substantially Grant admitted that he told petitioner that it was "better to tell the truth." The Government's brief inveighs against the supposed "talismanic effect" (p. 19) of these words, and submits, "in the face of authority" (p. 19), that they are insufficient to exclude the confession which follows. The Government frankly admits, however, that

"apparently this court (*i. e.*, the Court of Appeals of the District of Columbia) in *West v. United States*, 20 App. D. C., has held that these words alone were sufficient to render a confession inadmissible" (pp. 33-34).

Not only is this admission fully borne out by the West case, but it is further true that the Court of

Appeals, in the *West* case, reluctantly yielded the view which it had previously expressed in *Hardy v. United States*, 3 App. D. C., 35, decided in 1893 (where it held that the promise, "we would see what we could do for him," did not render a confession involuntary), because, as it frankly said, it was "constrained by the authority of the Supreme Court of the United States in the case of *Bram v. United States*." (*West v. United States*, 20 App. D. C., 347, at p. 351.)

The pertinent passage of the opinion of the Court of Appeals in the *West* case reads in full as follows:

"We are constrained by the authority of the Supreme Court of the United States in the case of *Bram v. United States*, 168 U. S., 532, to hold that the confession here was involuntary, and should not have been admitted in evidence. In various cases therein cited with approval and sustained by the majority of the court as stating the correct doctrine on the subject, the words used by the officers of the law to the prisoners in their custody to superinduce a confession were almost identical with those employed in this case. In *Rex v. Griffin*, Russ. & Ryl., 151, they were, 'It will be better for you to confess;' in *Rex v. Kingston*, 4 Car. & P., 387, 'You are under suspicion and you had better tell all you know;' in *Rex v. Garner*, 1 Den. C. C., 329, 'It will be better for you to speak out;' in *People v. Barric*, 49 Cal., 342, 'It will be better for you to make a full disclosure;' in *People v. Wolcott*, 51 Mich.,

612, 'It will be better for you to confess;' in *Commonwealth v. Myers*, 160 Mass., 530, 'You had better tell the truth;' in *Vaughan v. Commonwealth*, 17 Gratt., 576, 'You had as well tell all about it.' Some of these words of exhortation to a confession would seem to have been innocent enough; and yet they were each and all of them held sufficient to vitiate the confessions made in pursuance of them, and to relegate such confessions to the category of confessions involuntary in law. And if these words of inducement were objectionable, assuredly those of the present case are no less so. They are of the same precise tenor and effect." (*West v. United States*, 20 App. D. C., 347, at pp. 351-352.)

The excerpts from the opinion of this honorable court in the *Bram* case, summarizing with approval the decisions to which reference was made by the Court of Appeals in the *West* case, are as follows:

"In the cases following, statements made by a prisoner were held inadmissible, because induced by the language set out in each case: In *Rex v. Griffin* (1809), Russ. & Ry., 151, telling the prisoner that it would be better for him to confess; in *Rex v. Jones* (1809), Russ. & Ry., 152, the prosecutor saying to the accused that he only wanted his money, and if the prisoner gave him that he might go to the devil, if he pleased; in *Rex v. Kingston* (1830), 4 Car. & P., 387, saying to the accused, 'you are under suspicion of this, and you had better tell all you know';

in *Rex c. Enoch and Pulley* (1833), 5 Car. & P., 539, saying: 'You had better tell the truth or it will lie upon you, and the man go free'; in *Rex. v. Mills* (1833), 6 Car. & P., 146, saying: 'It is no use for you to deny it, for there is the man and boy who will swear they saw you do it'; in *Sherrington's case* (1838), 2 Lewin C. C., 123, saying: 'There is no doubt thou wilt be found guilty, it will be better for you if you will confess'; in *Rex v. Thomas* (1833), 6 Car. & P., 353, saying: 'You had better split, and not suffer for all of them'; in *Rex v. Simpson* (1834), 1 Moody, 410, and Ry. & Mood., 410, repeated importunities by neighbors and relatives of the prosecutor, coupled with assurances to the suspected person that it would be a good deal worse for her if she did not, and that it would be better for her if she did confess; in *Rex v. Upchurch* (1836), 1 Moody, 465, saying: 'If you are guilty, do confess; it will perhaps save your neck; you will have to go to prison; if William H. (another person suspected, and whom the prisoner had charged) is found clear, the guilt will fall on you. Pray, tell me if you did it'; in *Reg. v. Croydon* (1846), 2 Cox C. C., 67, saying: 'I dare say you had a hand in it; you may as well tell me all about it'; in *Reg. v. Garner* (1848), 1 Den. C. C., 329, saying: 'It will be better for you to speak out.' " *Bram v. United States*, 168 U. S., 532 at 552-3).

"We come then to the American authorities. \* \* \*

“In the following cases, the language in each mentioned, was held to be an inducement sufficient to exclude a confession or statement made in consequence thereof: In *Kelly v. State* (1882), 72 Alabama, 244, saying to the prisoner, ‘You have got your foot in it, and somebody else was with you; now, if you did break open the door, the best thing you can do is to tell all about it, and to tell who was with you, and to tell the truth, the whole truth, and nothing but the truth’; in *People v. Barrie*, 49 California, 342, saying to the accused, ‘It will be better for you to make a full disclosure’; in *People v. Thompson* (1890), 84 California, 598, 605, saying to the accused, ‘I don’t think the truth will hurt anybody. It will be better for you to come out and tell all you know about it, if you feel that way’; in *Beery v. United States* (1893), 2 Colorado, 186, 188, 203, advising the prisoner to make full restitution, and saying, ‘If you do so it will go easy with you; it will be better for you to confess; the door of mercy is open and that of justice closed’; and threatening to arrest the accused and expose his family if he did not confess; in *State v. Bostick* (1845), 4 Harr. (Del.), 563, saying to one suspected of crime, ‘The suspicion is general against you, and you had as well tell all about it, the prosecution will be no greater, I don’t expect to do anything with you; I am going to send you home to your mother’; in *Green v. State* (1891), 88 Georgia, 516, saying to the accused, ‘Edmund, if you know anything, it may be best for you to tell it’; or, ‘Edmund,



if you know anything, go and tell it, and it may be best for you'; in *Rector v. Commonwealth* (1882), 80 Kentucky, 468, saying to the prisoner in a case of larceny, 'It will go better with you to tell where the money is, all I want is my money, and if you will tell me where it is, I will not prosecute you hard'; in *Biscoe v. State* (1887), 67 Maryland, 6, saying to the accused, 'It will be better for you to tell the truth and have no more trouble about it'; in *Commonwealth v. Nott* (1883), 135 Mass., 269, saying to the accused, 'You had better own up; I was in the place when you took it, we have got you down fine; this is not the first you have taken, we have got other things against you nearly as good as this'; in *Commonwealth v. Meyers* (1894), 160 Mass., 530, saying to the accused, 'You had better tell the truth'; in *People v. Wolcott* (1833), 51 Michigan, 612, saying to the accused, 'It will be better for you to confess'; in *Territory v. Underwood* (1888), 8 Montana, 131, saying to the prisoner that it would be better to tell the prosecuting witness all about it, and that the officer thought the prosecuting witness would withdraw the prosecution or make it as light as possible; in *State v. York* (1858), 37 N. H., 175, saying to one under arrest immediately before a confession, 'If you are guilty you had better own it'; in *People v. Phillips* (1870), 42 N. Y., 200, saying to the prisoner, 'The best you can do is to own up; it will be better for you'; in *State v. Whitfield* (1874), 70 N. C., 356, saying to the accused, 'I believe you are guilty; if you are you had bet-

ter say so; if you are not you had better say that'; in *State v. Drake* (1893), 113 N. C., 624, saying to the prisoner, 'If you are guilty, I would advise you to make an honest confession; it might be easier for you. It is plain against you;' in *Vaughan v. Commonwealth* (1867), 17 Gratt., 576, saying to the accused, 'You had as well tell all about it.'"  
 (*Bram v. United States*, 168 U. S., 532 at 557, 559-561.)

Yet, in the instant case, although the point was elaborately argued in petitioner's brief, the Court of Appeals overrules the assignment of error based on Inspector Grant's statement that it would be better for the petitioner to tell the truth without even noticing it except insofar as it may be said to be noticed by the general statement that "the other errors assigned are not of sufficient importance to merit consideration" (R., p. 187).

Petitioner respectfully urges that there is no material difference between the situation dealt with in this assignment of error and that sustained in the *West* case, unless it be the difference (which has become immaterial in this case, through the granting of the writ), that since the decision in the *West* case, the United States Judicial Code has been so amended as to take away from the defendant in a criminal case the *right of writ of error* to this Honorable Tribunal, thus leaving petitioner without remedy except on writ of certiorari, the issuance of which is discretionary.

The failure of the learned Court of Appeals to discuss this point naturally relieved that court of any necessity for considering it either in the light of the ruling of this honorable tribunal in the Bram case or in the light of the doctrine of Prof. Wigmore, which the learned Court of Appeals has apparently elected to follow; that there is no doubt, however, as to the contradiction on this point between the Bram case, which the learned Court of Appeals was bound to follow, and Prof. Wigmore's doctrine, which the learned Court of Appeals did follow, is apparent from Prof. Wigmore's own frank statements.

In the course of his discussion of the subject of confessions, he comes to the consideration of the subject of confessions induced by "Advice that 'it would be better to tell the truth,' or its equivalent," in Section 832. After expressing the opinion that,

"on principle, the advice by any person whatever that it would be better to tell *the truth* cannot possibly vitiate the confession, since by hypothesis the worst that it can evoke is the truth, and there is thus no risk of accepting a false confession."

the learned author goes on to remark,

"Nevertheless, judges have been found with such extraordinary scrupulosity as to exclude confessions following such advice."

Under this statement Prof. Wigmore cites a large number of cases, among them the case of *Rex v. Baldry*, as to which he says:

"Pollock, C. B., in *R. v. Baldry*, *supra*, distinguished between 'tell the truth,' and 'you had better tell the truth;' but this quiddity seems not to be elsewhere advanced."

and he concludes this long list of citations with the following characteristic reference to the Bram case:

"1897, *Bram v. U. S.*, 168 U. S., 532; 18 Sup., 182 (the defendant was under arrest and was called into the office of the chief of police; "When Mr. Bram came into my office, I said to him: 'Bram, we are trying to unravel this horrible mystery.' I said: 'Your position is rather an awkward one. I have had Brown in this office, and he made a statement that he saw you do the murder.' He said: 'He could not have seen me. Where was he?' I said: 'He states he was at the wheel.' 'Well,' he said, 'he could not see me from there.' I said: 'Now, look here, Bram, I am satisfied that you killed the captain from all I have heard from Mr. Brown, but,' I said, 'some of us here think you could not have done all that crime alone. If you had an accomplice, you should say so, and not have the blame of this horrible crime on your own shoulders.' He said: 'Well, I think, and many others on board the ship think that Brown is the murderer; but I don't know anything about it'"; in a labored argument, this was held improperly admitted; it is enough to say that the ruling takes its place among those which have reached the highest pitch of ir-

rationality in this subject, and have done most to reduce the law of evidence to a mass of mediæval scholasticism and to put it in a condition to favor criminals; Brewer, J., with Fuller, C. J., and Brown, J., dissent, saying "To support this contention involves a refinement of analysis which, while it may show marvellous metaphysical ability, is of little weight in practical affairs"). \* \* \* Compare the cases cited post, sec. 838 ("You had better confess")."

Wigmore on Evidence, sec. 832, First Edition, p. 946; footnote 1, at p. 947.

*The Refusal to Permit Defendant to Testify as to  
Conversation with K. S. Wang.*

On Sunday, February 9, defendant had been held incommunicado by the police for a whole week and piled with questions day and night, and finally had been taken to the house of murder at 7 o'clock on Saturday night and grilled the entire night until he was removed to the police station at 5.20 the next morning and charged with murder. In spite of all this, the police do not even claim to have obtained, up to this time, any direct admission of guilt, anything which the Government regards as a "confession." They had merely obtained the remark about the man who went to the bank on Friday night and the disputed statement as to the handwriting on the check stub Saturday night. Sunday night they returned to the charge, re-en-

forced with the assistance of a Chinese, K. S. Wang. When defendant was on the stand, his counsel endeavored to bring out what happened, and the following ensued, as shown by the record:

"Sunday night at No. 10 station house witness met K. S. Wang. Thereupon the following ensued:

"The witness said, 'and K. S. Wang told me——'

"Mr. Laskey: I object.

"Mr. O'Shea: If the court please, we believe it is part of the circumstances surrounding the making of the confession, and we believe that if K. S. Wang made certain inducements or suggestions to this man, as the result of which this man made a statement, that that is proper.

"The Court: There is nothing to show that K. S. Wang had any authority to make any representations or take any part in the case.

"Mr. O'Shea: That may be true; but if it should appear that he was used by the police for that purpose——

"The Court: It does not appear yet.

"Mr. O'Shea: Detective Grant said, if I recollect the testimony correctly, that he did get K. S. Wang to talk to this boy.

"The Court: He said Wang talked to this defendant, but that got him to act for the police—there is no such testimony as that.

"Mr. O'Shea: I think he sent him in.

"The Court: It may be he went so far as to say he sent him in. I do not recall the exact language, the exact testimony, but there

is nothing from which you can reason he had any authority to represent the Government in this case.

"Mr. O'Shea: Very well, we make the offer to go into this conversation, and with the court's refusal to permit us to do so we take an exception.

"Which exception was duly allowed."  
(R., p. 144.)

It is respectfully submitted that this ruling was erroneous and vitally prejudicial to the petitioner. The practical importance of what K. S. Wang told the petitioner may be judged from the fact that immediately after petitioner's conversation with K. S. Wang, Inspector Grant was able to testify:

"There is where this man said that he wanted to tell his story, and he told me about seeing all three of these men killed" (R., p. 80).

The circumstances under which this happened can be best approached through the medium of the testimony of Lieutenant Kelly, who was also present. He says:

"Sunday night, February 9, about 7 or 7.30, in company with Inspector Grant and a young Chinese named K. S. Wang, from New York City, and Burlingame, witness went to No. 10 police station; Inspector Grant and Wang went into the sergeant's room and talked to defendant for a while, and then the inspector came out and left



Wang and defendant in the room together, placing a man on the outside in the yard under the window; after some little while Wang called Inspector Grant, who went into the room with defendant, and then the inspector called Burlingame and witness into the room. After Wan had told Grant he was going to tell him about the affair, Grant said, 'Let me ask you first, were you present when the men were killed?' and defendant said, 'Yes,' and went on to relate how a Chinese named Chen had killed Wu, after Wu had killed Wong and Hsie" (R., pp. 102-3).

Grant testified concerning this incident as follows:

He saw Wan Sunday "evening about six or seven; the witness, a Chinaman named K. S. Wang, Burlingame, and Kelly were there" (R., p. 80).

"Sunday evening at the mission house" witness was appealing to the good side of his nature; asked him several times to tell witness the truth about this thing; finally said to him, 'If you are guilty and your brother is innocent, now is the time to tell it; I want to know'; then it was he admitted seeing all three men killed; his brother was then in a cell in the back part of the building; witness started the conversation first; defendant was so reticent that witness asked K. S. Wang to talk to defendant, and he did so in Chinese; witness told Wang, 'You are

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(\*) Should be "station house." See R., p. 89, 102, etc.

one of his countrymen, now you talk to him, and see if you can get him to tell anything about this crime.' Witness made the statement to defendant about his brother before Wan [Wang] talked to him in Chinese; made it in the presence of Wang and defendant" (R., p. 80).

And again Inspector Grant says:

"Witness went to station house Sunday night with K. S. Wang about 6 or 7 o'clock for the purpose of still talking to him about the case; 'I wanted to straighten out a great many circumstances which pointed to him' " (R., p. 89).

And again:

"When witness first started to talk with defendant on that occasion, K. S. Wang was present; it was on that occasion that witness told defendant, 'If you are guilty, and your brother is innocent, I want to know, for I am holding your brother, just the same as I am holding you' " (R., p. 90).

"The Sunday night previous to this Monday, K. S. Wang talked to the defendant; the purpose of having K. S. Wang talk to him was because he was a friend of his and a Chinese, the same type of Chinaman that he was, and we thought there was a chance for him to tell K. S. Wang what he probably would not tell us; made no suggestions to Wang except told him the circumstances of the case and said to him, 'You can readily

see from these things that he got a lot to explain, and I would like to hear what he has to say to you about those circumstances; that is incriminating circumstances,' and witness said, 'I wish you would go over the whole case with him from the time he brought his brother down here to the time he was arrested in New York, or brought here from New York'; K. S. Wang had been brought down from New York by Mr. Kelly on account of the fact that a telegram had been sent by Wang on his way from the West to defendant or his brother; thinks K. S. Wang was brought to town Thursday or Friday; witness suggested that he go to see defendant Sunday night; just before he went in and talked with defendant witness suggested that he go in and talk with him and he was allowed to sit in there with him alone" (R., p. 91).

All this evidence was in the record when petitioner's counsel asked petitioner to state what K. S. Wang said to him on that all-important occasion on Sunday evening. K. S. Wang was brought in by the police after they had failed to secure anything which the Government deems a confession. He was taken in to Wan by Grant and left to talk with him alone in Chinese with the injunction:

"Now you talk to him, and see if you can get him to tell anything about this crime" (R., p. 80).

What Wang said to petitioner, Wan, the learned court's ruling deprives us of knowing; but we do know that just "before Wan (Wang) talked to him" (R., p. 80) Grant said to him:

"If you are guilty and your brother is innocent, now is the time to tell it; I want to know" (R., p. 80).

Or, as Grant puts it, at another time: "If you are guilty, and your brother is innocent, I want to know, for I am holding your brother, just the same as I am holding you" (R., p. 90).

It does not require any great stretch of the imagination to conclude that in spite of the fact that Inspector Grant testifies he "made no suggestions to Wang except told him the circumstances of the case" (R., p. 91), Wang might have understood himself at liberty to convey some threat or promise to Wan, perhaps in regard to his brother's liberty, and might in fact have done so, and it is submitted that if he did so it was under circumstances which clothed him, so far as petitioner is concerned, with authority to make such threat or promise in the name of the authority which had arrested and held him in custody.

To exclude evidence of what Wang said to Wan in such circumstances upon the ground announced by the learned trial court, that there was nothing in the record "from which you can reason he (K. S. Wang) had any authority to represent the Government in this case" (R., p. 144), was prejudicial

error and we submit even standing alone would justify a reversal of the judgment.

In the Government's brief in the Court below, it is said that the exception saved on this point fails because:

"\* \* \* The record does not show what the witness would have said had he been permitted to continue. It can not be the duty of a trial court to admit hearsay testimony on the chance that it may be admissible under some exception to the rule. Suppose Grant had authorized Wang to offer Wan an inducement to confess. There was nothing in the offer to go into the conversation to show that Wang actually held out to Wan any inducement." (Brief for Appellee, p. 55.)

It is respectfully submitted that there is nothing of substance in this objection to the form in which the exception was taken. The only matter of substance is that the trial judge shall have been fairly advised that petitioner's counsel intended to show a threat or a promise by someone for whom the police were responsible. Mr. O'Shea, petitioner's counsel, distinctly told the court "that we believe that if K. S. Wang made certain inducements or suggestions to this man as a result of which this man made a statement, that that is proper" (R., p. 144). What more could he have said? Was it necessary for Mr. O'Shea to repeat this statement when he said "we make the offer to go into this con-

versation" a few lines further down in the record? The court thoroughly understood the general purport of the evidence which petitioner desired to educe and the court excluded it on the ground that "there is nothing from which you can reason he (K. S. Wang) had any authority to represent the Government" (R., p. 144). On this point it is submitted that the learned court was in error. It is submitted therefore that the exception was properly saved.

But conceding for the sake of the argument that the form in which the offer was made is somewhat inartistic and might be open to technical objection in a civil case, it is nevertheless earnestly submitted that in a vitally important crisis in a capital case this honorable tribunal will not disregard an exception because an offer of testimony does not in terms "show what the witness would have said" when counsel has just finished telling the court what the witness would have said. That this honorable tribunal will consider an offer and exception in general terms in a criminal case is apparent from its decisions in the following cases:

*Wiborg v. United States*, 1896, 163 U. S. 632. The defendants were convicted of violation of the neutrality laws. This court said:

"No motion or request was made that the jury be instructed to find for defendants or either of them. Where an exception to a denial of such a motion or request is duly

saved, it is open to the court to consider whether there is any evidence to sustain the verdict, though not to pass upon its weight or sufficiency. And although this question was not properly raised, yet if a plain error was committed in a matter so absolutely vital to defendants, we feel ourselves at liberty to correct it" (p. 658).

To the same effect is *Clyatt v. United States*, 1904, 197 U. S., 207, at 221, where the Wiborg case is cited and followed.

*Crawford v. United States*, 1909, 212 U. S., 183, at 193-194:

Conviction on an indictment for conspiracy to defraud the United States. Counsel for the defendant challenged a juror because he was "a salaried officer of the government." Challenge was overruled and the defendant accepted. The court held:

"\* \* \* that the objection actually made reaches beyond the mere question whether technically the juror was or was not a salaried officer of the Government, and that it reaches the question of the qualification of a juror by reason of his relations to the Government as a post office clerk or employee \* \* \*" (p. 193-4).

"In criminal cases courts are not inclined to be as exacting with reference to the specific character of the objection made, as in civil cases. They will, in the exercise of a



sound discretion, sometimes notice error in the trial of a criminal case, although the question was not properly raised at the trial by objection and exception. *Wiborg v. United States*, 163 U. S., 632, 659" (p. 194).

*Weems v. United States*, 1909, 217 U. S., 347, at 362:

Defendant was convicted in the Philippines for falsifying "a public and official document." The third and fourth assignments of error were to the effect respectively that the record did not show that the plaintiff in error was present when tried and that the punishment was "cruel and unusual." The court said in the course of its opinion:

"It is admitted, as we have seen, that the questions presented by the third and fourth assignments of error were not made in the courts below, but a consideration of them is invoked under Rule 35, which provides that this court, 'at its option, may notice a plain error not assigned.'

"\* \* \* As we have already said, the rule is not a rigid one, and we have less reluctance to disregard prior examples in criminal cases than in civil cases, and less reluctance to act under it when rights are asserted which are of such high character as to find  
 • expression and sanction in the Constitution or bill of rights. And such rights are asserted in this case."

The court accordingly reversed the conviction.

In the Weems case Constitutional rights under the 8th amendment were asserted and vindicated. In the present case Constitutional rights are asserted under the 5th amendment.

### III. Petitioner's Statements Being Confessions and Not Voluntary Were Therefore Inadmissible.

It follows irresistibly from the authorities that if the petitioner's statements were confessions and were not voluntary they are inadmissible:

"In short, the true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort" (Mr. Chief Justice Fuller in *Wilson v. United States*, 162 U. S., 613, at 623, quoted with approval in *Bram v. United States*, 168 U. S., 532, at 548).

The learned Court of Appeals says in the course of its opinion:

"The crucial test to be applied in determining whether or not a confession is voluntarily or involuntarily made, depends upon its truth or falsity. As was said by the court in *Commonwealth v. Dillon*, 4 Dall., 115, 117: 'If such declarations are voluntarily made, all the world will agree, that they furnish the strongest evidence of imputed guilt. The hope of mercy actuates almost every criminal who confesses his crime; and merely that he cherishes the hope, is no reason, in morality, nor in law, to disbelieve him. The true

point for consideration, therefore, is whether the prisoner has falsely declared himself guilty of a capital offense? If there is ground even to suspect, that he has done so, God forbid, that his life should be the sacrifice!

"Applying this rule, the present confession accords with every reasonable theory of guilt. All the circumstances in the case corroborate it. Therefore, its admissibility, as competent evidence for the consideration of the jury, is supported by every principle of law" (R., pp. 185-6).

It is submitted with all deference that this amounts to changing accepted law by judicial definition. This Honorable Court holds that a confession is admissible if voluntary. The learned Court of Appeals, on the other hand, holds that a confession is voluntary if it is true, and therefore admissible if it is true, and proceeds to apply that rule to the instant case by saying that the admissibility of petitioner's confession is "supported by every principle of law" because "all the circumstances in the case corroborate it" (R., p. 185).

It is possible that this conception of the law arises from a misapprehension of the authority quoted, *Commonwealth v. Gillan* (4 Dall., U. S., 116, at 117). An examination of that case discloses that the passage quoted by the learned Court of Appeals is from the charge of the Court to the jury commenting upon the confession which the Court

had already held to be admissible, under circumstances which would certainly now secure its exclusion in almost all jurisdictions. As addressed to the jury, which had the confession before them, the admonition that "the true point for consideration, therefore, is, whether the prisoner has falsely declared himself guilty of a capital offense" was, of course, correct; but as applied by the learned Court of Appeals to the question of admissibility it amounts to striking down the accepted law of confessions and substituting therefor the novel proposition that the admissibility of a confession is determined by the Court's opinion of its truth or falsity.

(1) *The Confession Not Corroborated.*

There is one aspect, however, in which the language of the learned Court of Appeals may be thought to require further consideration. It is said: "All the circumstances in the case corroborate it" (the confession). This passage may be intended to refer to the doctrine of the admissibility of a confession by virtue of a confirmation by subsequently discovered facts. The cases where stolen property has been recovered as the result of confessions are the best known illustrations of this doctrine. This doctrine, which has many refinements, goes into such questions as to whether merely the facts of the discovery may be shown or that part of the confession directly relating to the discovery,

etc., etc. It is submitted that it is unnecessary to discuss this doctrine in the present case for the simple reason that there were no material facts discovered as the result of petitioner's confession. It is submitted that the petitioner in his confession told the police officers nothing which has been proved to be true which they did not already know and had not already told him except the ultimate fact (which the jury must have found to be true) that petitioner killed Ben Sen Wu. Not only is the confession not confirmed as to any material fact subsequently discovered to be true, but on the contrary it is contradicted by a host of more or less material facts, some of which were known or might have been known to the police officers who took the confession even at that time.

For example:

1. In the confession, the petitioner, Wan, says he came to Washington on Friday, January 24, 1919 (R., p. 108). But Mrs. Gertrude Bartels, his landlady, testifying for the Government, says he left her house in New York on Wednesday, January 22 (R., p. 25).

2. In the confession, Wan says he sent the second telegram to his brother, Van, "after 5 or 6 o'clock," Tuesday, January 28 (R., p. 110), at Wu's suggestion. But the Government proved through Florence Waters that this telegram was filed with the Western Union Telegraph Co., at 2.16 p. m., January 28 (R., p. 36), which tends to

support Wan's testimony at the trial (R., p. 136) that he sent the second telegram because he was very sick and thought perhaps his brother did not receive the first one.

3. In the confession Wan says that Wu told him he was going out to dinner Wednesday night, January 29th (R., p. 110), and "would be home as soon as he finished his dinner party" (R., p. 110), but the Government's witness King Chu testified that he "had no previous engagement to have dinner with Wu that evening; it just came up after class that night when they left the school" (R., p. 121), and that "witness and Wu went to the Oriental Cafe at Pennsylvania Avenue near 14th street and had dinner with two other friends; had no previous arrangements at all; met Mr. U. Shang Ly there and later Mr. Jeffers joined them" (R., p. 120). It is submitted that Wan learned of this "party" not from Wu but from the police. Major Pullman testified for the Government that he told Wan on Saturday evening when he was first brought to Washington that "Mr. Wu had dinner with U. Shang Ly, Howard Jeffers and King Chu on Wednesday" (R., p. 92).

4. In his confession, Wan says (R., p. 111) that Wu telephoned him while he was at the Mission between 7 and 8 o'clock on Wednesday, the 29th, the evening on which the murders were supposed to have been committed. But Mr. King Chu, a Government witness, who went to dinner with Wu that

night about 6 o'clock and left the restaurant with him "a little before 8 o'clock" (R., p. 120), and saw him take a Mt. Pleasant street car at 14th and F streets, says nothing whatever of Wu's telephoning anyone while they were together. The same is true of Mr. Harry A. Jeffers, another Government witness present at the dinner (R., p. 36). Mr. U. Shang Ly, the other person present, was not called.

5. According to the confession, Wu told Wan on Tuesday, January 28, that he had taken the check out of the book, and, on Wednesday, that Dr. Wong had discovered that it was missing, had blamed Wu, and had called up the police (R., p. 110). But the Government utterly failed to corroborate this by showing by the police that they had been notified, and it is therefore reasonable to presume that they had not been so notified.

Moreover, if the police had in fact been notified of the theft of the blank check they would doubtless have notified the bank, and when Van presented the envelope containing the check on January 30th explanations would have been in order before he was permitted to leave the bank. Instead the bank merely declined to pay the check because of lack of identification (R., p. 45), and only notified the police that the check had been presented two days later, Saturday, February 1st, after the murders had been discovered (R., p. 83).

6. In the confession Wan says he wrote the check in the kitchen with a "fountain pen" which



Wu took "from his pocket" and which he thinks belonged to Mr. Hsie (R., p. 112), but while Officer Evans testified for the Government that he "took two fountain pens off Mr. Hsie's body" (R., p. 51) there is no evidence showing a fountain pen on Mr. Wu's body or in his clothes in his room.

7. According to the confession Wu fired one or two shots "at Mr. Hsie's back" (R., p. 113), then Hsie "partly ran" (R., p. 113) to the furnace room. With Wu behind him, and "about one" shot followed (R., p. 113), presumably at Hsie's back. The coroner, Dr. Nevitt, for the Government, testified that Hsie had a "gunshot wound in the head *in front* where the bullet was found, no other wounds and no powder marks on the body" (R., p. 57, italics supplied).

8. In the confession Wan says that Wu fired at Dr. Wong when the latter entered the kitchen—he thinks one shot (R., p. 115). Wong turned and rushed upstairs. "Wu followed him upstairs and struggled with him" (R., p. 115). Wan who remained in the kitchen thinks he heard two or three shots. At the trial Inspector Grant for the Government testified that blood was found "on the stairs leading up from the kitchen" as well as upstairs "where Dr. Wong lay" (R., p. 86). Major Pullman testified for the Government that the detectives told Wan "about the glasses at the bottom of the staircase; that Dr. Wong's body had been found upstairs on the reception hall floor, indicating that he must have been shot and he had strug-

gled upstairs; that things were in a topsy-turvy condition in the little central room, lamp shade turned over, and so on; is not sure the glasses are Dr. Wong's glasses; \* \* \*'' (R., p. 96). Coroner Nevitt testified that Wong's body showed "two gunshot wounds, one through the heart about the third rib, and the other a little below the fourth rib, which is the axilla; the point of entrance of one was through the heart, and the other, the axilla; one bullet was found lodged in the right lung and the other almost down diagonally across the body to the seventh rib in the tissue of the muscular tissue over the lung" (R., p. 57). Further the Coroner testified to a cut on Dr. Wong's right forehead and about two inches long, numerous abrasions on the top of the head and forehead and back of the head, and on the back of his right hand and wrist; also a large contusion or bruise on the right chest (R., p. 57). It is submitted that these physical facts are gravely inconsistent with the confession in at least the following respects:

(a) In spite of the desperate struggle which according to the confession must have taken place between Wong and Wu no wounds were reported by the Coroner on Wu's body except the two bullet wounds (R., p. 57), which according to the confession were later inflicted by Wan. Moreover Kang Li testified for the Government that he found Wu's room, where apparently, according to Wan's confession (R., p. 116), ~~Wu~~ changed his clothes immediately after killing Hsie and ~~Wu~~ in

an "orderly condition" (R., p. 48), with a book open at a chapter on Government or Constitution (R., p. 48).

(b) Either the shot fired at Wong when he entered the kitchen took effect or it did not. If it did not take effect the blood on the stairs remains unaccounted for by the confession. If it did take effect it could not have been the shot in the heart which "would be fatal" (R., p. 57), but must have been the shot which entered at the axilla and passed "almost down diagonally across the body to the seventh rib" (R., p. 57). Even after having received this wound it is submitted that it is highly improbable that Dr. Wong could have retained strength to go upstairs and engage in the struggle described in the confession and receive all the injuries described by the Coroner. Moreover, why should a man with a loaded pistol following a desperately wounded man have occasion to engage in such a struggle as is indicated by the physical facts?

The confession is, however, entirely consistent with the theory that petitioner was endeavoring as best he could to give back to the police the theory of the killing of Wong which Major Pullman had already explained to him (R., p. 96) and making mistakes in the attempt.

9. In the confession Wan says in telling of the killing of Wu, "I put the gun right against his body and shot again" (R., p. 117), but in Coroner Nevitt's testimony for the Government nothing is

said of powder marks on Wu's body and no point of exit for the bullet is noted (R., p. 57).

10. According to the confession, Hsie returned to the Mission house about 10:30 p. m. (R., p. 112) and was killed at once. Dr. Wong came in about ten or twenty minutes later (R., p. 114), and entered the kitchen "not over ten minutes" later (R., p. 114) and was killed. Wu must have been killed shortly thereafter, although the exact time is not stated. Dr. Wong and Mr. Hsie had left the Chinese dinner-party about 10 p. m. (testimony of U. C. Yang and Lingoh Wang for the Government (R., p. 37). Wu finished dining a little before 8 p. m. (Testimony of King Chu, for the Government, R., p. 120). Nevertheless, the Coroner at the autopsy of Dr. Wong's body "noticed no evidence of food" (R., p. 58). As to Hsie's body, the Coroner could not tell "whether there was evidence of food in the stomach." There was nothing said on this point in the case of Wu.

11. In the confession, Wan says that after having washed his hands he went upstairs and went out by the front door (R., p. 118). Inspector Grant testifies that there were blood marks on the outside of the cellar door leading from the furnace room to the street near the knob. It "appeared to us (the detectives) that the man had opened the door with his left hand and put his right hand, which was probably bloody, on the outside of the door" (R., p. 86). The murderer apparently left with bloody hands and by the cellar door.

The foregoing list by no means attempts to exhaust the specific inconsistencies between the confession and the physical facts as disclosed elsewhere in the record. It simply attempts to point out some of the inconsistencies which can be brought out in brief compass and without resorting to any particular argumentation or inference.

(2) "*A Suggested Confession.*"

It is submitted that when the petitioner made his confession he simply gave back to the police the information he had received from them. He did not need to know anything which they had not told him. Fortunately the evidence in the record in support of this point is abundant and conclusive.

Major Pullman testifies that on Saturday night at the mission house, witness

"showed him [Wan] the entrance hall of the building, reception hall, where Dr. Wong's body had been found; had the boys light up the entire house, took him to the basement, showed him where the bullets hit the wall, where the bodies had lain, the condition of the table, and so on; were in the furnace room, should say, twenty-five or thirty minutes; not much conversation there; he asked a number of questions which we answered to the best of our ability" (R., p. 93).

Again, on cross-examination, referring to the same Saturday night, Major Pullman says:

"He (Wan) wanted to see where everything had been done and asked a number of questions; thinks the pictures were shown to him" (R., p. 96).

Again,

"Defendant asked about position of the bodies in the basement" (R., p. 96).

Inspector Grant says, referring to the same occasion:

"On reaching the mission house, took the defendant over the whole scene; showed him some bullet holes in the kitchen in the wall" (R., p. 85).

"Showed him the precise spot where the bodies were found, and upstairs showed him where Dr. Wong lay, and the blood there, and the blood on the stairs leading up from the kitchen; told him evidently Dr. Wong had been shot on the stairs, because his handkerchief was found at the foot of the stairs and his glasses; does not know yet whether or not they were Dr. Wong's glasses" (R., p. 86).

"Witness pointed out to defendant where Dr. Wong's body had been discovered, and how he was found, told him his face was all bloody and swollen beyond recognition" (R., p. 86).

"We would show him bullet holes in the walls, the blood, told him about the water being hot, everything of that kind; told him

practically everything there was; went through the history of the thing; asked him what he thought about it all" (R., p. 86).

And finally, Inspector Grant says, that on this occasion:

"After the foregoing, we went over the whole case with Wan from the time he left the mission house, his being found in New York, in bed, writing a telegram of condolence, covered the entire thing, how the bodies were found, the wounds on the body, the check; went over practically each and every circumstance in the case for the purpose of seeing if he would tell us anything about any part of the case that would enlighten us as to who committed the crime" (R., p. 88).

Again, referring to his conversation with Wan, when accompanied by K. S. Wang, Sunday evening, at Police Station No. 10, Inspector Grant testified that he

"went over practically and rehashed all the case as far as they had learned about it and related all the circumstances against him; told him a lot of things," etc. (R., p. 81).

Further, witness

"thinks Wu's pistol was shown defendant Sunday night in No. 10 station house; thinks that was the first time showed him the blood on the pistol" (R., p. 89).



Lieutenant Burlingame, on cross-examination,

"being asked if he had ever made any suggestions to the defendant during those four or five days as to how this triple murder took place, said, 'Well, that is rather hard to answer in that way, Mr. O'Shea'; the triple murder was talked over and discussed in almost every way imaginable; defendant asked the officers a number of times to describe just how the dead bodies were found, where each body was found, during that week at the hotel," etc. (R., pp. 63-64).

"cannot say witness made suggestions to him, only that the murder was discussed" (R., p. 64).

Again, in describing what happened at the mission house Saturday night, Lieutenant Burlingame said:

"somebody said to defendant if he wanted to see where these three men were found would show him, so he was taken over the house and walked around, and he asked a great many questions: 'Who laid there?' There was the spot where Dr. Wong's body lay; quite a spot of blood; he asked who was found there and whose blood, something to that effect; he was taken down in the basement and shown the position of the other bodies; he asked about the revolver, where it was found, and they told him; then he went through the house in a general way" (R., p. 66).

Again, referring to Saturday night,

"then we started around the house and stopped at the dark spot where Dr. Wong was found; this had already been described to the defendant and when he came to the house he was familiar with that, and where the other bodies were found; that night he stopped there and asked some questions, asked how many times he had been shot, about the coat, and then went down stairs, and practically the same thing was repeated down there; \* \* \* he asked some questions about how the lamp had got broken in the back room, does not recall whether they were answered, and asked questions where the bodies were found in the basement, where the revolver was found, and then witness left them," etc. (R., p. 73).

Again, Burlingame says:

"he (defendant) expressed a desire to see everything, and he asked questions about everything about the place during the week" (R., p. 77).

Again,

"From a remark that defendant made on Saturday night in the mission house witness judges he had been shown all the pictures; it was a remark in answer to a question about having seen the pictures, to indicate the position of something" (R., p. 77).

Coming to Monday morning, at the mission house, Lieutenant Burlingame says:

"Witness showed him the bloody handkerchief in the house on Monday evening so he could tell the story better, and where each of the incidents took place" (R., p. 75).

Again,

"Witness had the handkerchief in his pocket and showed it to him [Wan] at the kitchen table (this handkerchief had the name 'Wong' written on it in ink). Defendant asked witness where he found it, and witness indicated the step near the foot of the stairway leading from the kitchen upstairs, and defendant said he thought it was the same handkerchief Dr. Wong had in his hand that night when — shot him and he ran upstairs; witness recalls defendant saying something about having seen a picture of where the bodies of Wu and Hsie had been found" (R., p. 77).

"Witness thinks it likely defendant was shown the pistol" (R., p. 77).

Again,

"Witness recalls on Monday at the mission house defendant said something about having seen a picture of where the bodies of Wu and Hsie had been found; was not shown the pictures by witness; probably in the house that day a couple of hours (R., pp. 75-76).

In view of the foregoing, it is perfectly obvious that the petitioner was supplied with all the material for making the confession which the police

finally extracted from him, and that his attempts in his confession to follow the facts and theories which had been drilled into him by the police afford not the slightest corroboration of the verity of the confession, but, in fact, are the best evidence that the petitioner simply attempted to give back to the police what they had already told him.

It is perhaps worth while to support this general proposition by comparing some of the more important statements in the confession and their obvious sources as shown in the testimony of the police officers. If there is any one thing which stands out in the foregoing excerpts in the record it is that the petitioner had drilled into him the precise places where the bodies were found, both by being shown the exact locations in the house and by being shown pictures taken while the bodies were still there. Accordingly, it is no surprise to find that in the confession petitioner was careful to have the three men killed on the precise spots where he knew they had been found, and in order to do this he tells a story which, were it not so grewsome, would be humorous.

He has Wu shoot at Hsie in the kitchen, but has Hsie "partly run" (R., p. 113) into the furnace room, a trap, instead of attempting to escape upstairs, in order that he may die on the precise spot shown in the photograph; and, likewise, in the confession he inveigles Wu out of the kitchen and into the furnace room to look at the furnace, and kills him after he has minded the fire and starts to re-

turn to the kitchen, in order that, in his case, too, the prophecy of the photograph might be fulfilled.

It is respectfully submitted that there is nothing at all in the physical facts to show that Wu and Hsie were really killed where they were found. But they were found there and petitioner was informed that they were found there, and, in his confession, he has them killed there in conformity with his information.

Again, take the case of Dr. Wong. The police theory was that Dr. Wong was shot on the stairs and rushed upstairs and was killed upstairs, because his handkerchief and someone's glasses were found at the foot of the stairs and somebody's blood was found on the stairs. This theory, which as above indicated is in view of the nature of Dr. Wong's wounds highly improbable to say the least, was of course adopted in the confession. Even the details of what the police told petitioner are reproduced. Thus Major Pullman told Wan, as above quoted:

"Dr. Wong's body had been found upstairs on the reception hall floor, indicating that he must have been shot and he had struggled upstairs"; (R., p. 96).

Petitioner, in his confession, echoes this fact:

"Wu followed him upstairs and struggled with him" (R., p. 115).

Major Pullman proceeds:

"things were in a topsy-turvy condition in the little central room, lamp shade turned over, and so on;" (R., p. 96).

Petitioner's confession echoes:

"I heard chair fall and glass break" (R., p. 115).

Nothing was left to petitioner's imagination when he came to make his confession.

But even after petitioner had been held *incommunicado* by the police without any formal charge against him from Saturday, February 1st, until Sunday, February 9th, when he was charged with murder and had been repeatedly and almost constantly during waking hours examined with respect to the circumstances of the crime; even after he had been taken to the house of murder on Saturday night and had all the circumstances known to the police rehearsed, rehashed and re-enacted by the police again and again on the very scene of the crime between 7 o'clock at night and 5.30 the next morning; even after he had been charged with the murder Sunday morning and on Sunday evening under the further examination of Inspector Grant in company with K. S. Wang, a Chinese, had confessed to being present when the men were killed by a Chinese named Chen; even after he had been taken back to the mission house Monday and had had a dress rehearsal, so to speak, of his confession

with Lieut. Burlingame on the very scene of the crime; still when he came to make the formal written confession on Tuesday morning it was not made in the form of an unaided, connected statement which might carry on its face the impression of a man telling a story with which he is familiar. It was made in response to leading questions by Lieut. Burlingame. As Burlingame testifies:

“\* \* \* Witness asked him to tell the story in his own way, and defendant said, ‘No, you ask questions, I answer it better.’ Witness asked him questions based on the story he had told the day previous, and that was put down in the statement, which was then taken down in Station No. 10, Tuesday morning, February 11th,” etc. (R., p. 70).

A glance at the written confession which is found in the record at pages 108-120, will show the leading character of Burlingame's questions, and the brief or indefinite character of most of petitioner's answers. The following passage taken from the record at the top of page 109 is typical:

Burlingame: Now, did Mr. Wu make a proposition to you about getting some of the mission money—about getting a check?

Wan: When I was at the mission.

Burlingame: And what did he say?

[Fol. 100] Wan: He just said I could get some money. He figured like that way.

Burlingame: He said he wanted to get some of the mission money?

Wan: Yes.



Burlingame: And how did he say he was going to get it—by check? Did he say get one of the mission checks?

Wan: Yes.

Burlingame: And who did he say would go to the bank and cash it?

Wan: That time he didn't say.

Burlingame: After you rented a room at the Harris Hotel did you send a telegram to your brother? Did you ask him to meet you here in Washington?

Wan: Yes.

Burlingame: Did he come?

Wan: No. (R., p. 109).

Instead of petitioner making an intelligent, connected confession bearing upon its face the marks of verity, Lieut. Burlingame was confessing for the petitioner through the medium of leading questions and securing petitioner's assent in monosyllabic answers.

It is respectfully submitted that the general situation under which petitioner made his so-called confession, aside from the specific inducements or threats held out to him and which are elsewhere discussed, is aptly described by petitioner in the following passage of his cross-examination at the trial by District Attorney Laskey in which he characterized the confession as a "suggested confession:"

"\* \* \* On Sunday night at the station they wanted Chen in it, and witness put him in, and on Monday at the mission they told

witness there was no Chen in it, so witness did not put Chen in it. On Monday morning at the mission house said that witness' friend, Wu, killed Hsie and Dr. Wong, because was forced by police, and Mr. Grant had told witness at the Dewey Hotel that Wu had bad character in Washington, which witness doubted; witness was locked in jail and did not know anything, but maybe it is true and maybe the detectives telling lies; at the same time, Dr. Wong and Mr. Hsie were killed, and witness think maybe there was something wrong with Wu, as witness had not been in Washington. Witness did not think Mr. Wu killed Dr. Wong and Mr. Hsie; Inspector Burlingame thought so; I did not think so, yet I have signed this confession, though \* \* \* I was forced myself, I could not say; if he wants me to put anybody, if he wants me to put something else, I was willing to do that.

[Fol. 145] "Q. Why did you put Chen in then?

"A. They say, the detectives, 'There is no Chen in it;' if they say 'Is Chen in it,' then I say 'Chen in it,' I have to do what detectives want me to do.\* \* \*

"Q. Why, they first charged you with having killed all three of the men, didn't they?

"A. Yes.

"Q. Why didn't you admit that then?

"A. At first he charged me three and at first he asked me the killing; at first he asked me the check and I denied that because at that time my physical condition was not so bad, and later on, gradually and gradually

they had me in the hotel and they questioned me more than eight days and finally I could not stand this condition, and moreover I got more information from them (?) and I know very well about this case even if I did not do it, and they ask me the story and ask you if you knew it; surely I know it. I know the story from the detectives.' It a suggested confession."

Thereupon the following occurred:

"'Q. It is a suggested confession, is it?

"'A. Yes.

"'Q. Not a compulsory one. They did not force you to sign it, but they made a suggestion and you followed it. Is that right?

"'A. Yes.'" (R., pp. 156, 157.)

It is interesting to compare the above excerpt from the record in the instant case with the following which is extracted from the record in *People v. Brockett, supra*, and reproduced by the Supreme Court of Michigan in its opinion holding the confession in that case inadmissible:

"'Q. What did you tell them?

"'A. I told them just the way they told me. \* \* \* They told it to me several times over so I understood it, and I up and told it to them the same way they told it to me. \* \* \* I just followed the statements as they made it to me. \* \* \* Mr. Carroll said I would get out of it if I told the truth about it, and he wouldn't listen to me tell what was really true, so I had to tell what he wanted me to.

\* \* \* I offered to tell the truth when I first started, but they wouldn't listen to the truth, so I thought the easiest way to get out of it, I was willing to do it. \* \* \* They told me I would get clear if I told the truth, and I tried to tell the truth when I first started, but they wouldn't listen to it; they said it was no such thing as that at all. They tried to tell me that I was telling a lie when I was trying to tell the truth. \* \* \* I was rattled up; I don't hardly know which one was talking; they were both talking all the time together. \* \* \* They drilled me for a day and a half before they ever had me say what I did. They had been drilling at me telling me all about this and asked me questions if I did it, telling me how it was done and all about it. Then of course I knew how it was done; I could get up and tell it. \* \* \*

"Q. Didn't he tell you he wanted you to tell the truth?

"A. Yes, but he wanted me to tell it so that I did it, and I thought the best way, if I could get out of it, I would tell it that way." \* \* \* (*People v. Brockett*, 195 Mich. 169).

#### *IV. The Admission of Petitioner's Confession was Highly Prejudicial.*

The Government's brief in the Court of Appeals concludes as follows:

"Before closing our discussion, we cannot refrain from advertg to the fact that, aside from the confessions, the testimony appear-

ing in the record, abbreviated and stated in narrative form, demonstrates appellant's guilt beyond a reasonable doubt" (Brief for appellee, p. 55).

It is possible that the Government will repeat this contention in this Court. However often repeated, we meet it with a two-fold answer. First, we respectfully but emphatically deny that the evidence aside from the confession could justify or support a verdict of guilty. Second, we submit as a matter of law, that the Government's contention in such regard is irrelevant, and has been so held by courts of the highest respectability—this because the verdict of the jury was based upon all the evidence including the confession and nothing appears to indicate how much or how little credence was given to latter.

In a recent Michigan case, heretofore referred to, *People v. Brocket* (1917), 195 Michigan 169, the State put forward this same contention, viz., that the admission of defendant's confession was not prejudicial since there was enough evidence *aliunde* to warrant a conviction. The Supreme Court of Michigan, in reversing the case, disposed of such contention as follows:

"It is said on behalf of the people that there was sufficient evidence to warrant a conviction of the defendant without the confession. Without conceding that this is true (for it appears to us that the case was a close one upon the facts), yet it should be said

that the fact that evidence other than the alleged confession was sufficient to justify a conviction did not make the admission of the confession, improperly extorted, harmless, as it cannot be said what weight the jury gave to the confession in reaching their verdict" (*People v. Brockett*, 195 Michigan, 179).

The same point arose in a recent California case, *People v. Loper*, (1910), 159 California, 6, where, in reversing a conviction for murder on account of the improper admission of a confession, the Court said:

"It is suggested that the evidence in this case was so complete without the confession of the defendant that the jury would have found him guilty even if the confession had been entirely omitted. While this argument serves to emphasize the lack of excuse for the resort on the part of public officers to the methods of the 'third degree,' it does not abate one whit the defendant's right to all of his constitutional privileges.

\* \* \* \* \*

"\* \* \* To say that the confession of the following morning was not influenced by the conduct and the conversation of the officers, would be to contradict all human experience. And it is equally untenable to say that because the prosecution had a perfect case without the confession, the jury would have imposed the ultimate penalty of the law upon the de-

fendant, whether that confession had been excluded or admitted. No one could say (not even the jurors themselves) just what weight the confession had in fixing the belief of the jury in Loper's guilt, and especially in shaping a verdict involving capital punishment. But every one must conclude that the introduction of the defendant's own statement of his guilt under the circumstances here shown, must have been most highly prejudicial to him. It follows that for this reason a new trial must be ordered" (*People v. Loper*, 159 California, 20-21).

*V. Petitioner's Confessions Being Involuntary as a Matter of Law it Was Error for the Trial Court to Submit Them to the Consideration of the Jury.*

The learned Court of Appeals says in its opinion:

"The testimony of defendant was in the nature of a general denial of the evidence given by the officers and witnesses on behalf of the Government, especially as to defendant's alleged treatment by the officers, which he claims induced him to confess. This, however, presented a well-defined issue of fact as to whether or not the confession was voluntarily made, and, like all other issues of fact, was one for the consideration of the jury" (R., p. 183).

But it is submitted that the statements which the police officers themselves testified that they made



to petitioner, and which, of course, the petitioner did not deny, rendered the confessions involuntary as a matter of law. True, the Government's witnesses repeatedly testified in terms that they made no threats and offered no inducements. As Inspector Grant put it, he "never offered any inducements because witness has had too much experience in that line" (R., p. 81). But it is submitted that this statement becomes merely the statement of an incorrect conclusion of law when placed in juxtaposition to the physical facts of the prisoner's custody, as testified to by Government witnesses, and with the specific statements which Inspector Grant and the other officers testified they made. "If you are guilty and your brother is innocent, now is the time to tell it; I want to know" (R., p. 80); "told him that things looked pretty black for him" (R., p. 80); "If you are guilty and your brother is innocent, I want to know, for I am holding your brother, just the same as I am holding you" (R., p. 90). "Q. And this was what you meant by saying that you appealed to the better side of his nature—by telling him that the investigation looked awfully black and that he had better tell you the truth? A. Yes; I thought if he told the truth about it, it would be the proper thing for him to do under the circumstances" (R., p. 81). \* \* \* "Q. Your purpose in telling him those things was to make him talk? A. My purpose was to get him to tell me the truth about this case. Q. Answer the question, will you? A. Well, he had to talk" (R., p. 90).

No statement as to the treatment which the petitioner received or as to the threats or inducements which were made to him has been relied upon in this brief, except the uncontradicted statements of the Government's own witnesses. And it is respectfully submitted that if upon the Government's own showing petitioner's confessions were inadmissible as a matter of law they could not have become admissible by the fact that petitioner and his brother testified to other facts and statements, which, if established, would have made them still more inadmissible, if inadmissibility can be said to be a matter of degree.

In *West v. United States* (1902), 20 Appeals, D. C., 347, the Court of Appeals of the District of Columbia stated the question of law involved as follows:

"The only question in the case is whether the alleged confession of the appellant was voluntary or involuntary in contemplation of law; and whether this should have been determined by the court, or whether under the circumstances it was properly left to the jury for its determination" (p. 351).

The court held that the evidence should have been excluded and reversed the case. The portion of the opinion dealing with the latter part of the question involved, namely, whether or not it was proper to submit to the determination of the jury whether the confession was voluntary or involuntary, is dis-

posed of by the learned court in its opinion as follows:

"In the case of *Wilson v. United States*, 162 U. S., 613, it was held that 'when there is a conflict of evidence as to whether a confession is or is not voluntary, if the court decides that it is admissible, the question may be left to the jury with the direction that they should reject the confession if upon the whole evidence they are satisfied it was not the voluntary act of the defendant;' and it is argued from this that it was proper here to submit the question to the jury as it was actually submitted. But there was here no conflict of testimony. It is true that the appellant, as a witness on his own behalf at the trial, denied that he had made the confession testified to by the police officers; and that in this regard there was contrariety of testimony. But there is no contradiction by him of the words of inducement used by the officers; and those words being such as, under the decision in the *Bram* case, were sufficient to render the confession involuntary in law, there was nothing to be passed upon by a jury. If there had been controversy whether such words were used, the prisoner affirming and the officers denying such use, then a case might have been presented for the consideration of the jury under the ruling in the case of *Wilson v. United States*.

"Under the authority of the case of *Bram v. United States*, it must be held that there was error in the admission in evidence of the alleged confession claimed to have been

made by the appellant, as well as in the submission of the question to the jury whether the confession was voluntary or involuntary" (p. 352).

VI. *The Justice Who Presided at the Trial Having Died Pending Settlement of a Bill of Exceptions, No Other Justice or Judge Was Competent to Settle Same.*

Section 953 of the Revised Statutes of the United States, as amended by Act of June 5, 1900, ch. 717, Sec. 1 (31 Stats. L., 270; Comp. Stats. 1918, Sec. 1590), is inapplicable to cases tried in the Supreme Court of the District of Columbia.

Mr. Justice Gould, who presided at the trial of this case, died after petitioner's bill of exceptions had been duly submitted for settlement, but before his action thereon could be had (R., 179). Conceiving the situation thus created to be governed by the provisions of Section 73 of the Code of Law of the District of Columbia (which in all substantial phrasing is but a re-enactment of Section 803 of the Revised Statutes of the District of Columbia), in conjunction with applicable provisions of Rule 48 of the Rules of Practice of the Supreme Court of the District of Columbia, counsel for petitioner Wan moved to vacate the judgment, set aside the verdict and grant a new trial, upon several grounds specified, the principal one of which, and the only

one to be argued under this assignment of error was that

“The death of the said trial justice left no one with power or authority to settle the bill of exceptions” (R., 10, 175).

Such principle was sustained by this Court in *Hume vs. Bowie*, 148 U. S., 245, wherein a similar situation had arisen and had been brought under review with reference to the provisions of Section 803 of the Revised Statutes of the District of Columbia in conjunction with Rule 64 of the then existing Rules of Practice, which did not materially differ in terms from the present Rule No. 48, above referred to.

But Mr. Chief Justice McCoy, then holding a criminal term of the Supreme Court of the District of Columbia, being of opinion that the provisions of Sec. 953, of the Revised Statutes of the United States as amended, governed and controlled the situation in the circumstances, was satisfied that he could allow a true bill of exceptions. The Chief Justice arrived at this conclusion because among other things where there was a difference among counsel “as to exhibits” a comparison of these exhibits was made by the court (Mr. Chief Justice McCoy, who had not sat at the trial and had no judicial knowledge of the occurrences at the trial) and this comparison of the exhibits, is relied upon to sustain the ruling of the court who thus constituted himself a thirteenth juror. Accord-

ingly Chief Justice McCoy overruled the objections of counsel timously made as above set forth, and first having noted appropriate exceptions upon his minutes, signed the bill of exceptions which appears in the record at pages 21 to 181, thereof.

Such action of the learned Chief Justice was fully upheld by the learned Court of Appeals, and was disposed of in its opinion by the observation that

(R., 186, par. 2.) "This exception is fully disposed of in *Roney v. United States*, 43 App. D. C., 533, where it was held that Sec. 953 R. S., as amended by Act of Congress of June 5th, 1900 (31 Stats. L., 270), providing that in the case of the death of the presiding judge, any judge of the same court may settle and sign a bill of exceptions, applies to the District of Columbia. The law on this point, therefore, may be regarded as settled by the Roney case."

With great respect, we venture to think that neither such pronouncement of the learned Court of Appeals nor its declarations contained in the case specifically cited, correctly settles the law of the District of Columbia applicable to the settlement of bills of exceptions in the circumstances of the instant case. As the question is one of power and, therefore, of general importance, we venture to stress the point in the instant case in order that a contention which has agitated judicial and professional circles in the District of Columbia since

before the rendition of the opinion of the Court of Appeals in the Roney case may be finally put at rest.

This contention has arisen from and is rested upon the legislative history attending the provisions of Section 953 of the Revised Statutes of the United States and the amendment thereto and of Section 73 of the Code of Law for the District of Columbia, both of which are directly concerned with the claimed right to exercise the power in question on the one hand and the denial of the existence of the power and right so claimed on the other.

It is said by this honorable Court, speaking through Mr. Justice Matthews, in *Metropolitan Railroad Company vs. Moore*, 121 U. S., 558, at page 571:

“But the Act of March 3d, 1863, ‘To Re-organize Courts of the District of Columbia and for other purposes (12 Stats., 762), was the introduction into the District of Columbia of a new organization of its judicial system. It established a single court, to be called the Supreme Court of the District of Columbia, having general jurisdiction in law and equity. \* \* \* It also gave to each of the justices of the court power to hold a District Court of the United States for the District of Columbia, with all the powers and jurisdiction of other District Courts of the United States; and also to hold a criminal court for the trial of all crimes and offenses arising within the District,



with the same powers and jurisdiction as was then possessed and exercised by the Criminal Court of the District of Columbia.

\* \* \* The arrangement of that court, for the purposes of convenience and despatch of business, into general and special terms, was taken from the system long previously established and known in the State of New York in reference to its Supreme Court; and, for the purpose of determining the relation of the special to the general term, the Act of Congress of March 3, 1863, adopted the provisions from the legislation of New York incorporated into the sections of the Revised Statutes now under consideration."

(Including, among others, Section 803, to be hereinafter specifically referred to.)

Section 6 of said Act of March 3d, 1863, authorized said Supreme Court of the District of Columbia to:

"Establish such other rules as it may deem necessary for regulation of the practice of the several courts organized by this Act, and from time to time revise and alter such rules."

Section 7 provided:

"That all issues of fact triable by a jury or by the court shall be tried before a single justice." \* \* \*

Section 8 provided:

“That if, upon trial of a cause, an exception be taken, it may be reduced to writing at the time, or it may be marked on the minutes of the justice, *and afterwards settled in such manner as may be provided by the rules of the court*, and then stated in writing in a case or bill of exceptions, with so much of the evidence as may be material to the questions to be raised, but such case or bill of exceptions need not be sealed or signed.”  
(Italics supplied.)

By Act of Congress of June 1st, 1872 (17 Stats. L. 196, 197), “To further the administration of Justice”, which referred in terms to “any suit or proceeding in the circuit courts of the United States,” it was provided by Section 4 thereof:

“That a bill of exceptions hereafter allowed in any cause shall be deemed sufficiently authenticated if signed by the judge of the court in which the cause was tried, or by the presiding judge thereof, if more than one judge sat on the trial of the cause, without any seal of court or judge being annexed thereto.”

It would seem to be quite plain that although the above quoted provisions from the two Statutes pertained in general to the same subject matter, they differed in matters of particular and consequently, *prima facie*, at least, were applicable only within their respective indicated fields of operation.

Thus, with respect to the subject-matter under inquiry, the law remained without change or comment necessary to be noted here until June 22, 1874, on which day the Congress of the United States enacted two great but separate bodies of statutory law, the one commonly called the Revised Statutes of the United States, technically entitled "An Act to Revise and Consolidate the Statutes of the United States in force on the First Day of December, Anno Domini, One Thousand Eight Hundred and Seventy-three," and the other commonly referred to and called Revised Statutes of the United States relating to the District of Columbia, technically entitled "An Act to Revise and Consolidate the statutes of the United States, general and permanent in their nature, relating to the District of Columbia, in force on the first day of December in the Year of Our Lord One Thousand Eight Hundred and Seventy-three."

In the first of these great compilations, namely, the Revised Statutes of the United States, there appeared the following:

"Sec. 953. A bill of exceptions allowed in any cause shall be deemed sufficiently authenticated, if signed by the judge of the court in which the cause was tried, or by the presiding judge thereof, if more than one judge sat on the trial of the cause, without any seal of court or judge being annexed thereto."

It is very plain that this constitutes but a restatement of Section 4 of the Act of June 1st, 1872, above referred to.

In the second of the above compilations, namely, the Revised Statutes of the United States relating to the District of Columbia, there appeared the following:

“Sec. 801. All issues of fact triable by a jury or by the Court, shall be tried before a single justice.

“Sec. 803. If, upon the trial of a cause, an exception be taken, it may be reduced to writing at the time, or it may be entered on the minutes of the justice *and afterwards settled in such manner as may be provided by the rules of the court*, and then stated in writing in a case or bill of exceptions of so much of the evidence as may be material, but such case or bill of exceptions need not be sealed or signed.” (Italics supplied.)

It is equally evident that these sections constitute but a restatement of similar provisions of the Act of March 3d, 1863, above referred to. It is also equally evident that though pertaining to a like subject-matter, to that covered by Section 953, Revised Statutes of the United States, their respective provisions differ from each other in material aspects and were intended, as according to all generally accepted rules of construction they must now be held to have been intended, to apply to and to control within their own respective juris-

dictional spheres, neither one encroaching or to be permitted to encroach upon the field occupied by the other.

Again, as found by this Court in *Hume v. Bowie*, 148 U. S., 245 (which case was decided March 20th, 1893), then having the above Section 803 of the R. S. D. C. under consideration, the particular rule of practice of the Supreme Court of the District of Columbia to be considered in practical operation in connection with said Section 803 was the old rule 64 which reads:

“64. In case the judge is unable to settle the bill of exceptions and counsel cannot settle it by agreement, a new trial shall be granted.”

and the court indicated that said Section 803, in conjunction with said Rule 64 of the Rules of Practice of the Supreme Court of said District, prescribed and determined that

“Where the party, without laches on his part, loses the benefit of his exceptions through the death or illness of the judge, a new trial will be granted.”

In reaching its conclusions as declared in *Hume v. Bowie, Supra*, the Court did not refer to Section 953 of the Revised Statutes of the United States and none had the temerity to suggest that it in anywise bore upon the matter then under inquiry.

Thus the matter rested until the October Term,

1899, of this honorable Court, when there was brought before it for decision the case of *Malony v. Adsit*, on appeal from the District Court of the United States for the District of Alaska (175 U. S. 281), in which this Court, speaking through Mr. Justice Shiras, first citing and quoting Section 953 of the Revised Statutes, remarked (p. 285):

“We understand this enactment to mean that no bill of exceptions can be deemed sufficiently authenticated unless signed by the judge who sat at the trial, or by the presiding judge if more than one sat,”

and after citing and reviewing numerous cases, said: (p. 286).

“Those cases were cited with approval by this court in *Hume v. Bowie*, 148 U. S., 245, where it was held that where the judge presiding at the trial of a cause in the Supreme Court of the District of Columbia at circuit dies without having settled a bill of exceptions, it is in order for a motion to be made to set aside the verdict and order a new trial, and that, where such an order is made by the court in general term, it is not a final judgment from which an appeal may be taken to this court. It is true that there is a rule of the Supreme Court of the District of Columbia which provides that in case the judge is unable to settle the bill of exceptions and counsel cannot settle it by agreement a *new trial shall be granted, and that this court regarded that rule as apply-*

*ing to the case in hand, and that hence a new trial was a matter of course."* (Italics supplied.)

It is interesting, with reference to the specific circumstances attending the instant case, to note that Mr. Justice Shiras, at the outset of the court's opinion, in *Malony v. Adsit, supra*, states:

(p. 284.) "An inspection of this record discloses that the bill of exceptions was not settled, allowed and signed by the judge who tried the case, but by his successor in office, several months after the trial. It is settled that allowing and signing a bill of exceptions is a judicial act, which can only be performed by the judge who sat at the trial. What took place at the trial, and is a proper subject of exception, can only be judicially known by the judge who has acted in that capacity. Such knowledge cannot be brought to a judge who did not participate in the trial or to a judge who has succeeded to a judge who did, by what purports to be a bill of exceptions, but which has not been signed and allowed by the trial judge."

Though prescribed in differing terms through separate statutes the one effective and operating within the territorial limits of the District of Columbia alone, the other operating and controlling the practice in all courts of the United States elsewhere than in the District of Columbia, this court held that the same result followed in all cases and within both spheres of territorial statutory influ-



ence, namely, that a bill of exceptions to be legal and be given operative effect must be settled and signed by the very judge who sat at the trial.

Such result in the courts of the District of Columbia flowed from and was compelled by the provisions of Section 803 of the Revised Statutes relating to the District of Columbia. Elsewhere in the courts of the United States it flowed from and was compelled by the provisions of Section 953 of the Revised Statutes of the United States. The provisions of neither statute, while covering the same subject matter in general, namely the settlement of bills of exception where the judge who presided at the trial had died without settling same, encroached upon the territorial sphere of operation of the other.

Section 953 of the Revised Statutes of the United States, though in general terms possibly broad enough to include the District of Columbia, had no force of application therein because of the specific application there of the provisions of Section 803 of the Revised Statutes of the District of Columbia, which differed from Section 953 in affording room in the operation of the judicial mechanism for play of such rules affecting the subject matter, namely settling bills of exception as the Supreme Court of the District of Columbia from time to time might prescribe.

In this state of the affair, by "An Act Relating to the Allowance of Exceptions," approved June 5, 1900 (31 Stats. L., 270; Ch. 717), the Congress

enacted That section nine hundred and fifty-three of the Revised Statutes be so amended as to read as follows:

“Chap. 717. An Act Relating to the Allowance of Exceptions.

*“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section nine hundred and fifty-three of the Revised Statutes be so amended as to read as follows:

“Sec. 953. That a bill of exceptions allowed in any cause shall be deemed sufficiently authenticated if signed by the judge of the court in which the cause was tried, or by the presiding judge thereof if more than one judge sat at the trial of the cause, without any seal of the court or judge annexed thereto. And in case the judge before whom the cause has heretofore been or may hereafter be tried is, by reason of death, sickness, or other disability, unable to hear and pass upon the motion for a new trial and allow and sign said bill of exceptions, then the judge who succeeds such trial judge, or any other judge of the court in which the cause was tried, holding such court thereafter, if the evidence in such cause has been or is taken in stenographic notes, or if the said judge is satisfied by any other means that he can pass upon such motion and allow a true bill of exceptions, shall pass upon said motion and allow and sign such bill of exceptions; and his ruling upon such motion

and allowance and signing of such bill of exceptions shall be as valid as if such ruling and allowance and signing of such bill of exceptions had been made by the judge before whom such cause was tried; but in case said judge is satisfied that owing to the fact that he did not preside at the trial, or for any other cause, that he can not fairly pass upon said motion, and allow and sign said bill of exceptions, then he may, in his discretion, grant a new trial to the party moving therefor.

"Sec. 2. That this act shall apply to all causes now pending, and to all causes pending for hearing upon motion for new trials, and to all causes pending for the allowance of a bill of exceptions."

The purpose of the enactment as expressed in its preamble, was solely to amend Section 953, Revised Statutes, U. S. Nothing whatever is said with respect to the wholly separate and specially operating provisions of Section 803 of the Revised Statutes Relating to the District of Columbia.

If prior to the amendment, Section 953, R. S., U. S., had no application in the Courts of the District of Columbia, by what magic can an amendment thereof by added adjective matter, without altering or in any manner widening its previous sphere or field of operation, be assumed or construed to effect the repeal of the corresponding but separate enactment, viz. 803, Revised Statutes, D. C., specifically confined in operation to narrowly

defined territory. Had the Congress which is conclusively presumed to have acquaintance with its own legislative enactments and the respective fields each was intended to fill and control, intended to destroy by repeal or otherwise the vitality in whole or in part of Section 803, Revised Statutes, D. C., it could readily and should aptly have so indicated. So far from giving any such indication it has furnished full and unquestionable proof by its own later enactments that it neither cherished nor harbored any such purpose or intention.

By its "Act to establish a code of law for the District of Columbia" which was approved March 3, 1901,—that is approximately but ten (10) months after the enactment amending Section 953, R. S., U. S., and which became effective January 1st, 1902, the Congress re-enacted Section 803, R. S., D. C., as section 73 of the Code of Law for the District of Columbia, in the precise form and words in which it had theretofore existed. The particular rule of court then and since in force, is Rule 48, Sec. 3, which reads

"Rule 48, Sec. 3. If the court is unable to settle the bill of exceptions, a new trial shall be granted."

and corresponds to Rule 64 quoted in *Hume v. Bowie*, 148 U. S. 245, 249, which reads

"64. In case the judge is unable to settle the bill of exceptions, and counsel cannot settle it by agreement a new trial shall be granted."

Death of a trial judge would seem to effect an inability beyond all hope of repair.

In the light of such legislative and judicial history combined, can it reasonably be suggested that Section 953, R. S., U. S., as amended by the Act of June 5th, 1900, *supra*, has application to cases adjudicated in the Supreme Court of the District of Columbia?

If, as this Court authoritatively and conclusively adjudged and declared in *Hume v. Bowie, supra*, a new trial must be awarded in the circumstances existing in both that and the existing case because of Section 803, D. C., in conjunction with former Rule 64, how can it be that the identical statutory provisions labeled as Section 73, Code, D. C., in conjunction with the later and applicable Rule 48, permit of a different result?

The General Provisions of 953, U. S., as amended, broad and seemingly all embracing as same may appear to be, by generally accepted rules of statutory construction and application, must yield to the provisions of the specially applicable law. The general must yield to the special.

Nor can it be thought that such result is either defeated or deflected by the provisions of Section 1639 of the Code, D. C., which reads

“Sec. 1639. The enactment of this Code is not to affect or repeal any act of Congress which may be passed between the date of this act and the date when this act is to go into effect; and all acts of Congress that may be

*passed hereafter* are to have full effect as if passed after the enactment of this code, and, so far as such acts may vary from or conflict with any provision contained in this code, they are to have effect as subsequent statutes and as repealing any portion of this act inconsistent therewith." (Italics supplied.)

With respect to this it will at once be noted that the amendment of 953, Revised Statutes of the United States effected June 5, 1900, *supra*, was not effected "between the date of this act (*i. e.*, March 3, 1901) and the date when this act is to go into effect" *i. e.*, January 1, 1902; nor does such amendment constitute an act "passed *hereafter*, that is subsequent to March 3, 1901, and consequently is not to be considered nor given effect as "subsequent" statute nor "as repealing any portion of this act (*i. e.* the Code D. C.) inconsistent therewith."

In the light of what has gone before it is respectfully submitted that Section 953, Revised Statutes of the United States as amended June 5, 1900, is not and was not intended by the Congress to constitute general legislation applicable to the District of Columbia, and that is inconsistent with the provisions of Section 73 of the Code, D. C., a later enacted statute; that if the first suggestion be wrong then in so far at least as inconsistent Section 953 must yield to the restrictions expressed in the later and more narrowly applicable law. In either case no

foundation is afforded to support the conclusions expressed by the learned Court of Appeals, D. C., in *Roney v. U. S.*, 43 App. D. C. 533, at pages 537, 538 cited at page 186 of the record in the case at bar.

With submission we venture to think that the principles declared in *Johnson vs. United States*, 38 App. D. C., 347, as somewhat narrowed and affirmed by this Court on certiorari in *Johnson vs. United States*, 225 U. S., 405, are not adverse to the position of counsel as above taken and argued. In the last cited case, counsel for the United States took much the same position as that apparently assumed in the instant case by the learned Court of Appeals, with respect to apparently conflicting or overlapping provisions of the Code, D. C., and the Criminal Code approved March 4, 1909 (31 Stats., 1088, c. 321).

In disposing of the contention, this Court, speaking through Mr. Justice McKenna, said:

(P. 417.) "We think, however, that there are certain general considerations which control. The codes are separate instruments, and no certain test can be deduced from pointing out particular likenesses or differences. But the effect of separation is important and necessarily had its purpose. The codes had in the main special spheres of operation and provisions accommodated to such spheres. There is certainly nothing anomalous in punishing the crime of murder differently in different jurisdictions. It



is but the application of legislation to conditions. But if it be anomalous, very little argument can be drawn from it to solve the questions in controversy. The difference existed for a number of years between the District and other places under national jurisdiction, for, as we have seen, the qualified verdict has not existed in the District since the enactment of the District Code, and did not exist when the Criminal Code was enacted. There is certainly nothing in the mere act of enacting that code which declares an intention to give to the provision conferring power on a jury to qualify their verdict greater efficacy against the code of the District than the same provision in the Act of January 15, 1897, possessed. And the difference between that act and the District Code we cannot assume was overlooked and all that it meant in the administration of criminal justice when Congress came to review the laws of the country for the purpose of their codification and necessarily the territorial extent of their operation.

"Congress certainly in enacting the District Code, recognized the expediency of separate provisions for the District of Columbia. It was said at the bar and not denied that the District Code was not only the work of the lawyers of the District, having in mind the needs of the District, but of its citizens as well, expressed through various organizations and bodies of them. In yielding to the recommendations Congress made no new precedent. It had given local control to the Territories, and it enacted a separate code for Alaska.

"But it is said that Congress recognized the incompleteness of the District Code, and provided that all inconsistent acts of Congress passed thereafter should be held to modify its provisions, and to support this Sec. 1639 is cited. That section provides, as follows:

" 'The enactment of this code is not to affect or repeal any Act of Congress which may be passed between the date of this Act and the date when this Act is to go into effect; and all Acts of Congress that may be passed hereafter are to have full effect as if passed after the enactment of this code, and, so far as such Acts may vary from or conflict with any provision contained in this code, they are to have effect as subsequent statutes and as repealing any portion of this Act inconsistent therewith.'

"In connection with this section, Section 341 of the Criminal Code is referred to, which is as follows:

" 'Also all other sections and parts of sections of the Revised Statutes and Acts and parts of Acts of Congress, in so far as embraced within and superseded by this Act, are hereby repealed; the remaining portions thereof to be and remain in force with the same effect and to the same extent as if this Act had not been passed.'

"This section adds no force or explanation to section 1639. Of course, what was 'embraced within and superseded by' the Criminal Code is repealed by it. But we have to consider, as we have considered,

whether the provision of the District Code in regard to the punishment of murder were embraced within the Criminal Code, and the discussion answers as well the contention based on Section 1639. There is no inconsistency of superseding or repealing effect between the Code of the District and the Criminal Code, regarding the latter as an Act of Congress passed after the District Code. Having definite territorial operation, they can exist together. And, as said by the Court of Appeals, a cogent reason for the conclusion that they were intended to exist together is found in the repealing provisions of the Criminal Code, which, in Chapter 15, enumerates in detail the provisions repealed, and no reference is made to the District Code."

Motion of defendant's counsel to vacate judgment, set aside the verdict and grant a new trial, because of inability to legally settle a bill of exceptions for use on appeal, having been improperly denied, the judgment of the Court of Appeals, based upon approval of such denial, should be reversed, and the case remanded, with instructions for further proceedings to be had in the Supreme Court of the District of Columbia in accord with law.

VII. *The Learned Court of Appeals Erred in Holding That Petitioner Was Presumably Indebted to Wu at the Time of His Death.*

The learned Court of Appeals says in its opinion:

"On the question of motive, evidence of the financial condition of defendant at and prior to the time of the homicide was admitted over the objection and exception of defendant. Those transactions had direct relation to the Mission. Two checks he had received from Wu—one on the 27th, the day he left the Mission. He was presumably indebted to Wu at the time of the homicide. \* \* \*" (R., p. 186).

It is respectfully submitted that, as a matter of law, no presumption of indebtedness on the part of petitioner to Wu arises because Wu had given the petitioner his two checks. On the contrary, it is respectfully submitted that the presumption is that these checks were given for value received.

*Johnson v. Wright* (1894), 2 D. C. App. 216. "A negotiable check" \* \* \* "imports consideration" (p. 219).

*Towles v. Tanner* (1903), 21 D. C. App. 530. "It has been the general law, both in England and America, for 200 years" \* \* \* "that every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value" (p. 543).

VIII. *This Court Has a Right in a Capital Case to Notice the Following Prejudicial Errors to Which no Formal Exceptions Were Taken:*

(1) *The examination of the petitioner by the learned trial court was prejudicial error.*

We wish respectfully to draw the court's attention to the examination of the defendant by the trial judge in the Supreme Court appearing at pages 151 to 155 of the record. We do this with the utmost respect for the learned judge who presided at the trial, who not only had the highest reputation as a just and able judge, but who was recognized as peculiarly gifted in presiding fairly at criminal trials. This was probably the last important criminal trial at which Mr. Justice Gould presided. He died before the bill of exceptions could be settled and the bill of exceptions in this case was signed by the Chief Justice of the Supreme Court of the District of Columbia. But with all our respect for the memory of the justice who presided at the trial we believe that his examination of the petitioner, which became in substance a cross-examination, went beyond the limits which judicial discretion has fixed for an examination of a defendant in a capital case by the trial court, and was highly prejudicial to petitioner.

We bring this matter to the attention of the tribunal without argument fully realizing that no exception was saved to this examination. We do

respectfully dissent, however, from the view expressed by the learned Court of Appeals that counsel had expressly waived any exception. We submit that there was an unfortunate misunderstanding on this point and that counsel merely meant to insist that *all* the questions "without exception" (R., 155) (*i. e.*, omitting none) should go to the jury instead of two of the questions being stricken out. However, as above stated, we concede that exception was not preserved of record and that in bringing this matter to the attention of the tribunal we must rely entirely upon the right of this court in its discretion in a capital case to notice prejudicial error, even although no exception has been expressly reserved.

(2) *The instructions of the learned trial court involved prejudicial error in charging the jury in substance that if the jury found the written confession to be voluntary then the petitioner was guilty.*

This is another point to which no exception is reserved, but which we venture respectfully to bring to the attention of this court, this being a capital case, in view of the following expressions in the opinion of the learned Court of Appeals:

"A single exception was reserved by counsel for defendant to the instructions as given by the court, and this was directed to an unimportant and unobjectionable point.

Its total lack of merit seems to have been appreciated by counsel, since it is not discussed in his brief. However, considerable space has been devoted in the brief of counsel in pointing out what is regarded as objectionable features in the instructions. The general rule is that where exception is not taken at the proper time, the court will refuse to consider objections raised for the first time on appeal. Owing, however, to the gravity of the judgment, we have carefully reviewed the charge of the court, and find it to be not only without error but so expressed that no safeguard which the law throws around a person accused of crime, for the protection of his rights, was in this instance omitted." (R., p. 187.)

Reference is also made in this connection to the holding of this honorable tribunal in *Wiborg v. United States*, 163 U. S., 632 at 659, and the other cases cited in II (c) hereof, to the effect that courts will "in the exercise of sound discretion sometimes notice error in the trial of a criminal case, although the question was not properly raised at the trial by objection and exception."

In the course of the charge of the learned trial court to the jury the following passage occurs:

"In this case, both by the nature of the testimony and by the argument of counsel, it has resolved itself into two parts—I won't say distinct, because they are dependent, interdependent. The first is, Is the defendant proven to be guilty by the circumstances



which have been introduced by the Government; and the second is, Is his confession to be taken against him under the rules of law which I will state to you, which, of course, without contradiction, I suppose, on the part of counsel, if it is admitted, will show that he was guilty of this crime?" (R., p. 171).

It is respectfully submitted that this instruction amounts to telling the jury that if they conclude under the court's instructions that the confession was voluntary then they should find the defendant guilty, *i. e.*, they are precluded from disbelieving the confession, although the confession is at least in certain respects demonstrably untrue.

Assuming for the moment, and only for the purposes of the argument of this particular point, that the trial court properly submitted the petitioner's confession to the jury and gave proper instructions upon the question whether or not it was voluntary, it is still respectfully submitted that the jury was entitled to disbelieve the confession even if admissible and voluntary and that the foregoing instructions precluded them from so doing and was prejudicial error.

#### IX. *The Petitioner Asserts Constitutional Rights.*

Petitioner in this case asserts rights under the Constitution of the United States. This Court held in its comprehensive and enlightening opinion in the Bram case that the rule safeguarding confes-

sions in criminal cases had been expressly adopted and embodied in the fifth amendment to the Constitution of the United States, saying:

"In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment to the Constitution of the United States, commanding that no person 'shall be compelled in any criminal case to be a witness against himself'" (168 U. S. at 542).

And again:

"A brief consideration of the reasons which gave rise to the adoption of the Fifth Amendment, of the wrongs which it was intended to prevent and of the safeguards which it was its purpose unalterably to secure, will make it clear that the generic language of the Amendment was but a crystallization of the doctrine as to confessions, well settled when the Amendment was adopted, and since expressed in the text writers and expounded by the adjudications, and hence that the statements on the subject by the next writers and adjudications but formulate the conceptions and commands of the Amendment itself. \* \* \*" (168 U. S. at 543).

And finally:

"\* \* \* The well settled nature of the rule in England at the time of the adoption

of the Constitution and of the Fifth Amendment, and the intimate knowledge had by the framers of the principles of civil liberty which had become a part of the common law, aptly explain the conciseness of the language of that Amendment. And the accuracy with which the doctrine as to confessions as now formulated embodies the rule existing at common law and embodied in the Fifth Amendment was noticed by this court in *Wilson v. United States*, *supra*, where, after referring to the criteria of hope and fear, speaking through Mr. Chief Justice Fuller, it was said: 'In short, the true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort.' 162 U. S. 613, 623." (168 U. S. at 548).

The struggle for the maintenance of the correct balance and proportion between the rights of society and of the individual and for the protection of individual rights against the usurpation of power by the agents of society is never ending. Old abuses reappear in new forms and at once test and establish the soundness of the fundamental principles of Anglo-Saxon polity which have been written into our Federal and State Constitutions. The rack and the thumbscrew have given away to the "sweat box," the "third degree," "promises," "threats," and "importunate questioning" but the principles of our law and the articles of our Constitution abide, and the courts remain as the con-

stitutional instruments for the protection of the individual, and in so doing for the ultimate protection of society.

As was said in *Weeks v. United States* (1914), 232 U. S., 383, at 392:

“\* \* \* The tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizures and enforced confessions, the latter often obtained after subjecting accused persons to unwarranted practices destructive of rights secured by the Federal Constitution, should find no sanction in the judgments of the courts which are charged at all times with the support of the Constitution and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights.”

Respectfully submitted,

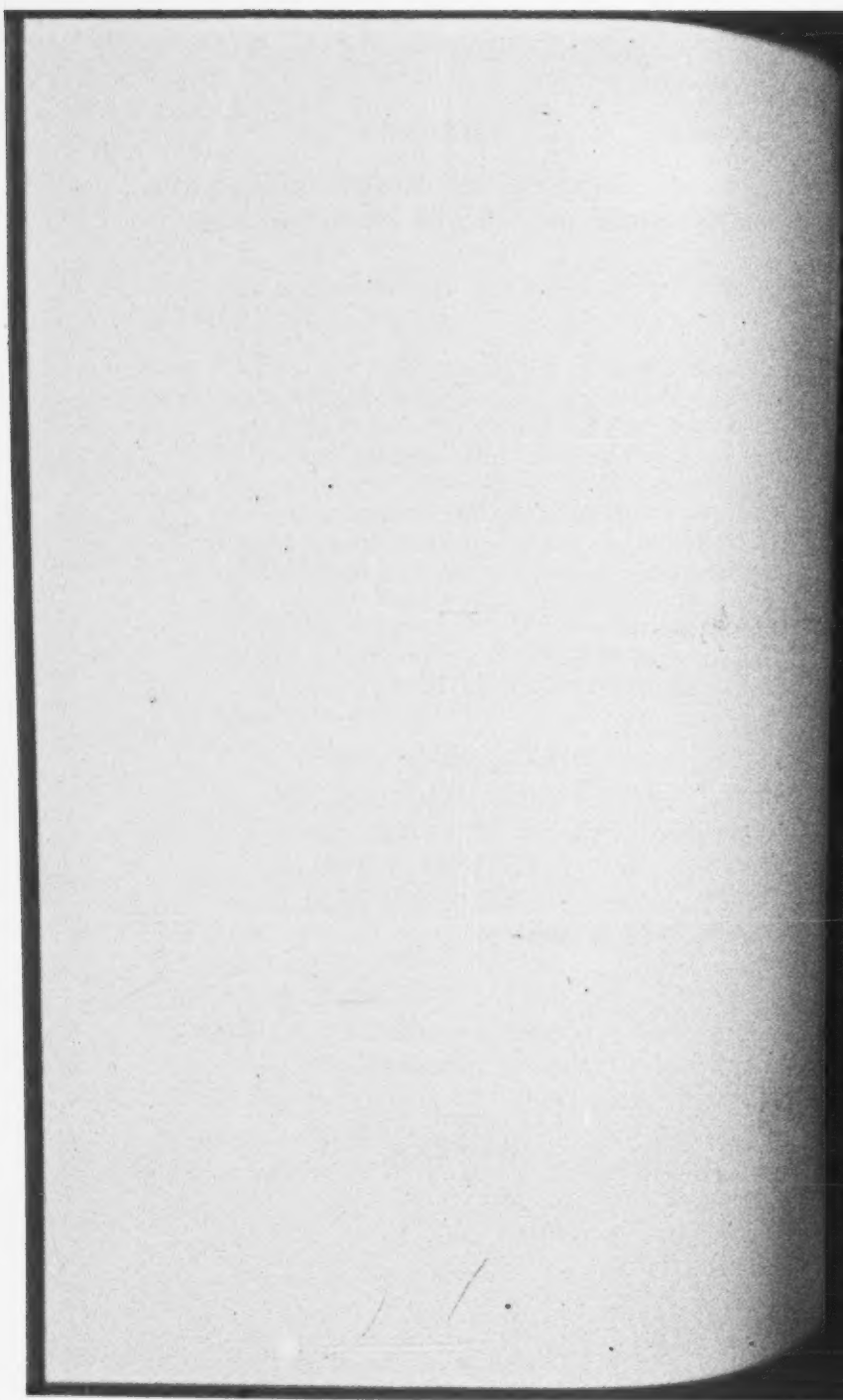
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*Of Counsel.*

(1967)











*In the Supreme Court of the United States.*

OCTOBER TERM, 1923.

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ZIANG SUNG WAN, PETITIONER,	}	No. 451.
v.		
UNITED STATES OF AMERICA, RE-		
SPONDENT.		

---

*ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF  
THE DISTRICT OF COLUMBIA.*

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**MOTION BY THE UNITED STATES TO ADVANCE.**

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The Solicitor General moves to advance the above-entitled cause for hearing at the earliest practicable date convenient to the court.

Wan, petitioner, was, in the Supreme Court of the District of Columbia, indicted, tried, and convicted of murder in the first degree, and sentenced to death by hanging. The judgment was, on May 7, 1923, affirmed by the Court of Appeals of the District of Columbia and the case is in this court on a writ of certiorari, issued by this court on October 15, 1923.

The precise question presented is whether reversible error was committed by the trial court in admitting in evidence certain confessions made

by petitioner over petitioner's objection that, under the doctrine laid down by this court in the case of *Bram v. United States*, 168 U. S. 532, such confessions were involuntary under the circumstances appearing in the record in this case.

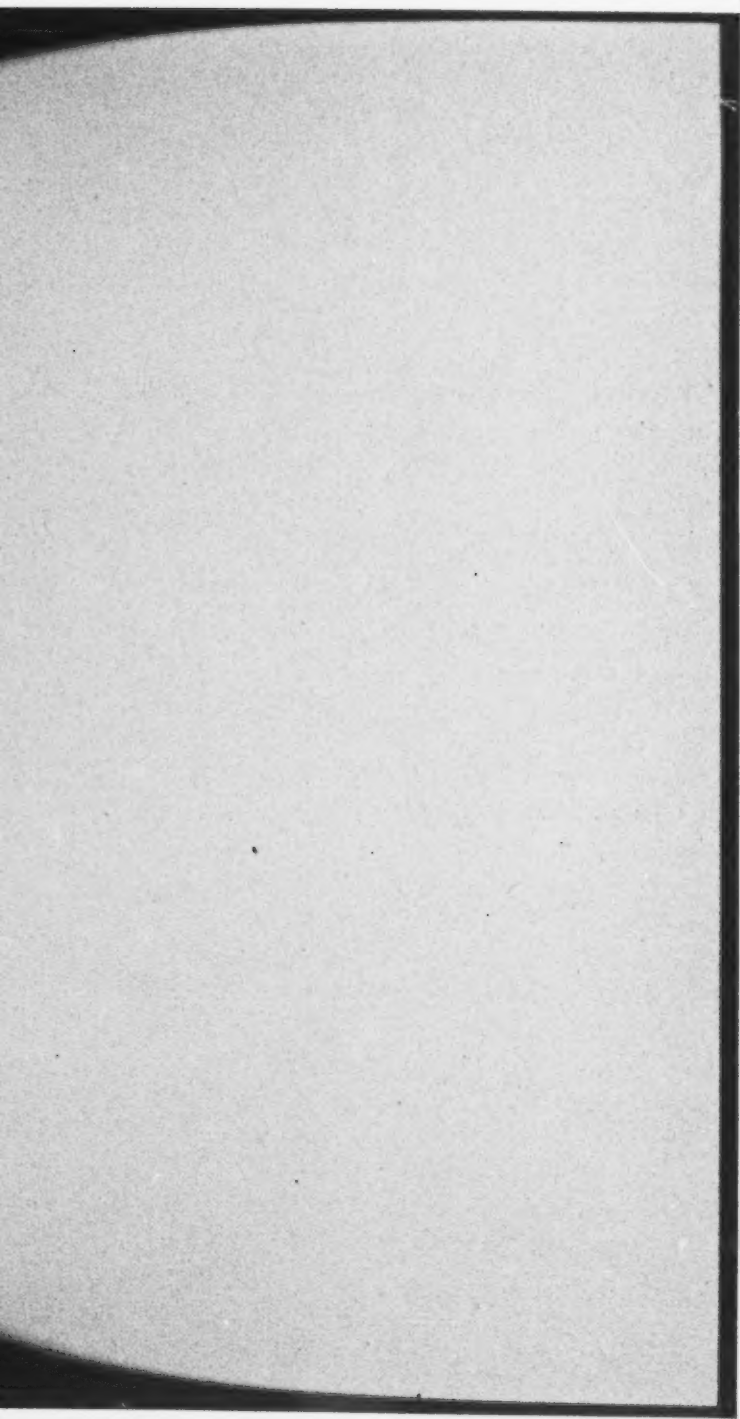
The same question is now before the Court of Appeals of the District of Columbia in the case of *Edgar Randolph Perrygo, appellant, v. United States*; in which case, also, the defendant was sentenced to be hanged for murder in the first degree. And the same question is frequently presented in the trial of criminal cases in the District of Columbia and other Federal courts.

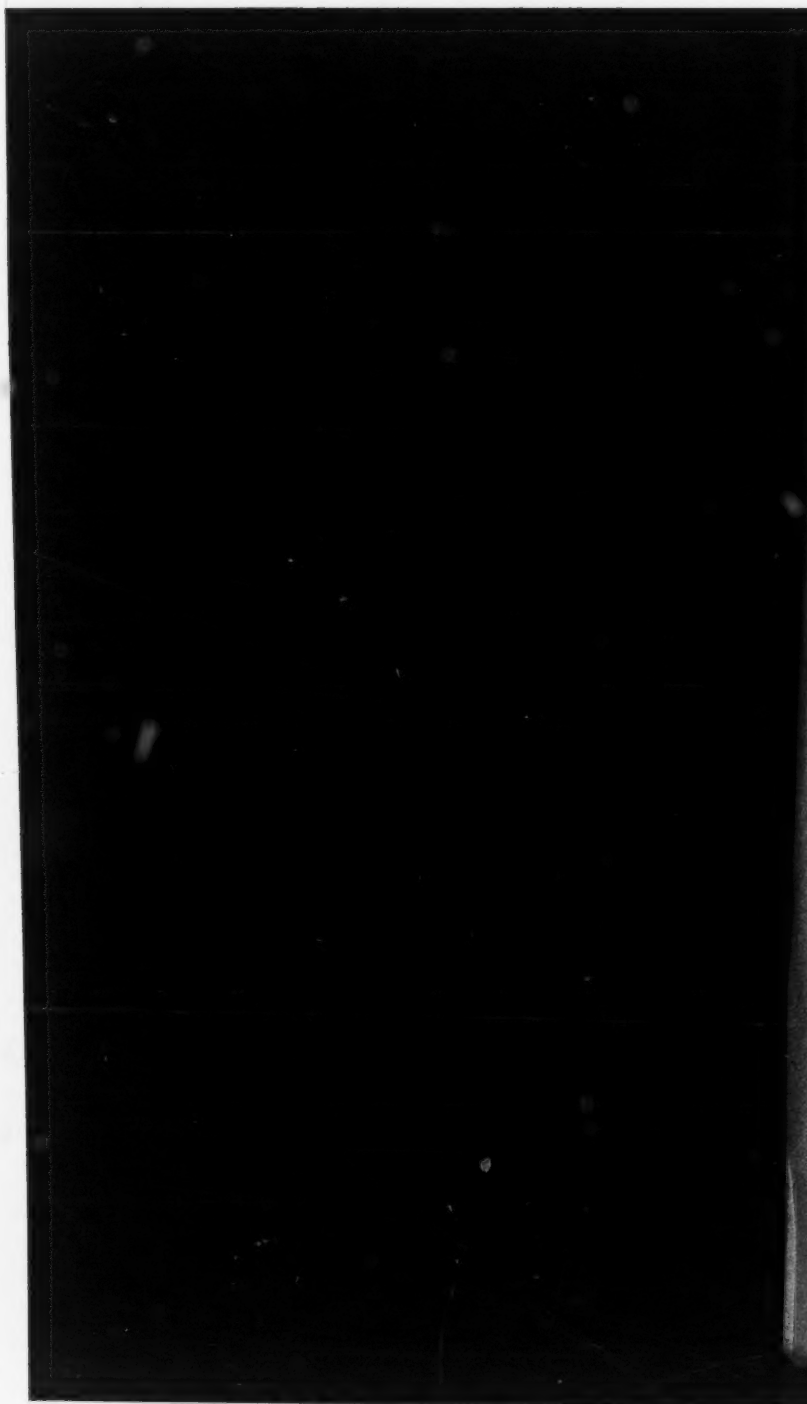
The public interest is involved and an early hearing of the case is desirable in order that the question of the admissibility of confessions under the circumstances appearing in the record in this case, and under similar circumstances in other criminal cases, may be promptly determined.

JAMES M. BECK,  
*Solicitor General.*

NOVEMBER, 1923.







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# In the Supreme Court of the United States.

OCTOBER TERM, 1923.

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ZIANG SUNG WAN, PETITIONER,	} No. 451.
v.	
THE UNITED STATES OF AMERICA.	

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ON CERTIORARI FROM THE COURT OF APPEALS OF THE  
DISTRICT OF COLUMBIA.

---

## BRIEF FOR THE UNITED STATES.

---

### STATEMENT OF THE CASE.

On January 31, 1919, more than five years ago, there were discovered at 2023 Kalorama Road NW., Washington, D. C., the lifeless bodies of Dr. Theodore T. Wong, Mr. C. H. Hsie, and Mr. Ben Sen Wu, members of the Chinese Educational Mission. From the gunshot wounds in the bodies, their position in the house, it was evident that they had been murdered.

Ziang Sun Wan, hereinafter referred to as the defendant, after a trial lasting more than a month, was, on January 9, 1920, more than four years ago, found guilty on the fourth count of an indictment charging him with the deliberate and premeditated murder on January 29, 1919, of Ben Sen Wu. (Rec. p. 5, 7, 34.)

At the time of the murder of which he was convicted, Wan had been in the United States for a period of about three years, having come to the United States from Shanghai, China, in 1916. Shortly after his arrival in this country he entered the Wesleyan University at Delaware, Ohio, where his brother Van, who had come to the United States in 1915, was a student. He and his brother Van also attended school in Columbus, Ohio, and in 1918 they attended the summer term of Columbia, University, New York City. (Rec. pp. 122, 135.)

During the summer of 1918 Wan received from Shanghai, for educational purposes, remittances to the amount of \$2,000. Shortly before this sum was deposited by Wan in the United States Mortgage and Trust Company, New York City, he stated to an acquaintance, Fohan Chen, that he had received some money from home for educational purposes and enquired of Chen where the latter deposited his funds. At the same time Wan told Chen that he wanted to invest the money in a moving picture business.

In the following September Wan purchased a lease on a moving-picture theater located in Brooklyn. For the lease he paid a thousand dollars down, which amount was drawn on his said account in the United States Mortgage and Trust Company, and agreed to pay an additional amount of \$500 later. By November the theater was closed as a failure, with Wan owing \$200, and Wan at the time stating that he was

looking for work. (Rec. pp. 80, 31, 32.) Between the time of the closing of the theater and the murder of Ben Sen Wu, a period of about two months, Wan had no employment. On January 13, 1919, Wan received and cashed a check for \$50.00 from Ben Sen Wu. (Rec. p. 33.) At this time the balance of Wan's account at the United States Mortgage and Trust Company was \$41.07. (Rec. pp. 28, 29.)

On or about January 22, 1919, Wan left the place where he was boarding—313 West 112th Street, New York City—and coming to Washington, became a guest at the home of the Chinese Educational Mission. (Rec. pp. 24, 25, 135.) The members of the Mission at that time consisted of the said Dr. Theodore T. Wong, director; C. H. Hsie, secretary treasurer; and Ben Sen Wu, secretary and clerk. (Rec. p. 34.)

On *Monday, January 27th*, between 10.30 and 11.00 o'clock a. m., Wan registered and procured a room (No. 431) at the Harris Hotel, located near the Union Station. (Rec. p. 35.) At 12.06 p. m. on the same date he sent a telegram to his brother Wan in New York City to come to Washington, and on the next day, *Tuesday, January 28th*, at 12.16 he sent another telegram asking his brother to come to Washington immediately. (Rec. p. 36). *Wednesday, January 29th*, between 9.00 and 10.00 o'clock a. m. his brother Van was seen at the Harris Hotel. (Rec. p. 36.)

On the same day, *January 29th*, at about 7.00 o'clock p. m., one Kang Li, a Chinese student under

the supervision of the Educational Mission, who knew Wan, went to the door, rang the bell of the Mission House. At the same time he noticed a light in the hall near the door and saw Wan's hat and scarf on a rack. The defendant came to the door and was asked by Li whether Mr. Wu or Dr. Wong were at home. Wan stated that they had both gone out and that he, Wan, was going out after awhile. The defendant's demeanor toward Kang Li was cool. (Rec. pp. 34, 35.) *On the same night, Wednesday, January 29-30th, at 12.40 a. m.,* Wan and his brother Van were seen in the Harris Hotel waiting for an elevator to take them upstairs, evidently to room 431, which Wan had engaged there on the 27th. (Rec. pp. 37, 38.)

Ben Sen Wu, earlier in the evening of the same day, Wednesday, *January 29th*, had dinner with some friends at a Chinese café, and was last seen alive about 7.45 p. m. on that date. (Rec. p. 36.) Dr. Theodore T. Wong and C. H. Hsie were last seen alive between *10.00 and 11.00 p. m. of the same day.* (Rec. p. 37.) On *Thursday, January 30th*, a letter carrier went to the Mission House three different times to deliver mail, and rang the bell each time, but no one responded. (Rec. p. 46.)

*Thursday, January 30th, a little after 9.00 a. m.,* Wan and his brother, near the Union Station, engaged a taxicab and drove to the Riggs National Bank. (Rec. p. 39.) Wan remained in the taxicab while Van entered the bank and presented for payment a check, purporting to have been signed by

C. H. Hsie and Dr. T. T. Wong, drawn upon the account of the Educational Mission, in the sum of \$5,000, "payable to bearer." At the time Van presented the check for payment he also presented a letter written upon the Mission's stationery, purporting to have been signed by the same persons, requesting the bank to pay the "check to bearer." Van also exhibited to the teller the card of Ben Sen Wu. (Rec. pp. 40, 41, 42, 43.) The check was examined by two or three officials of the bank and payment refused. While the check was being examined, Van asked one of the officials to call the Mission House. This was done, but no response was had. Wan and Van then returned in the same taxicab to the Union Station, where Van paid the fare. (Rec. p. 39.)

On the same day, January 30th, between 12.00 and 1.00 p. m., Wan "checked out" at the Harris Hotel (Rec. p. 35) and around 5.00 p. m. of the same evening Van was seen near his lodging place in New York, and Wan was seen in his room in New York the next morning. (Rec. p. 25.)

The following day, Friday, January 31st, at about 6.00 o'clock p. m., at the request of Mr. Sun of the Chinese Legation (Rec. p. 47), the Mission House was entered by Kang Li, who saw there in the reception hall the body of Dr. Wong which had an incised wound about two inches long on the forehead, and abrasion on the top of the head, three or four on the back of the head, and two gunshot wounds in the



chest, one of which entered the heart. The bodies of Ben Sen Wu and C. H. Hsie were found in the basement, one of the bodies having two gunshot wounds in the chest, and the other a gunshot wound in the head and one in the chest. The wounds were caused by 32-caliber bullets. A 32-caliber revolver was found on a chair near the bodies of Wu and Hsie. An autopsy showed that all three had been dead longer than 36 hours. (Rec. pp. 47, 57.)

*On Saturday morning, February 1, 1919, at about 8.30 a. m.,* Detectives Burlingame and Kelly, of the Washington Police force, accompanied by Kang Li, who saw Wan at the Mission House on *January 29th*, and who later discovered the bodies at the Mission House, went to the boarding house of Wan and his brother Van in New York City. When the officers entered the room, leaving Kang Li in the hall, they found Wan in bed, with a tablet and some paper in his hands. They told him they were officers from Washington investigating the death of Dr. Wong. Wan then said that he had just learned from the papers about the death of his good friends and was about to draft a telegram of condolence to his friend Kang Li. He then asked the officers a number of questions concerning the death of his friends, when they were killed, when the bodies were discovered, where they were found, and whether the officers had found the murderers. Burlingame then asked Wan how long he had been in Washington and when he left. To these questions Wan replied that he had been in Washington about a week and had left there

on *January 27th*. (This is the day he registered at the Harris Hotel.) At this point Kang Li was called into the room, and, after he had spoken to Wan and Van, Wan was again asked when he left Washington, and he said on *January 29th*. (This was the day he was seen by Kang Li at the Mission House.) (Rec. pp. 59, 60.)

During the conversation among the officers, Kang Li, and Wan, the latter expressed a desire to go to Washington, stating that there might be something he could do to assist the officers in locating the murderers of his friends. Burlingame then informed him that he would be glad to have Wan go, as from the information they had received he, Wan, was the last person to see these men alive. Wan then stated that he would like to go but that he did not have any money (the testimony showed that he had on his person only a few dollars and an uncashed check from Ben Sen Wu in the sum of \$30.00); that he did not think his physical condition would permit it; that his stomach was bad and he might need medical attention. Burlingame promised to pay Wan's expenses, and Kang Li told Wan that he ought to come to Washington, stating that either he or Wan might be suspected of doing the killing. (Rec. p. 59.) Wan then consented and came with the officers to Washington. To avoid press reporters on arrival at the Union Station, he was taken to No. 409 15th Street NW., instead of to the Police Headquarters. Here he was engaged in conversation by Major Pullman, then Superintendent of Police. Wan told the latter that on

*January 29th* he had had dinner with Ben Sen Wu; that he and Wu went to the Union Station together, and that he, Wan, took a train leaving for New York at 8.15 p. m., and when closely questioned on this point he said he did not have dinner with Wu but that he was sure that he left on a train leaving Union Station at 8.15 p. m. *January 29th.* (Rec. p. 92.)

There were present at the time Inspector Grant, Detective Sergeants Burlingame and Kelly, and witness. We told him we appreciated his coming; he came of his own accord; he was not feeling any too well after his journey, and we questioned him and told him what occurred. The four of us telling him, in order to make it possible for him to help us as far as he could in arriving at who committed this deed; we asked him about his staying as a guest of Mr. Wu at the Mission House; he told us of having been there three or four days, and having left Washington Wednesday evening; had had dinner with Mr. Wu; said he left on the 8.15 train; asked if he was sure Wan first said "of course"; asked if it was not the 6 or 7 o'clock train, Wan said no; said he was sure it was the 8.15 train. Witness said, "Mr. Wan, you have come here, according to your statement, to help us in the investigation, and have started out by telling us two deliberate falsehoods." Wan said "It is true"; witness told him it was absolutely untrue that he left on the 8.15 train, or that he had dinner with Mr. Wu; told him that Mr. Wu had dinner with U. Shang Li, Howard Jeffers, and King Chu on

Wednesday, and he could not have had dinner with him; defendant said he did not have dinner with him, but Mr. Wu, knowing defendant was not feeling well, got him some fruit and went with him to the station, and ate there just before the train went out; witness had conversation with Wan regarding going to the bank; all this occurred during the hour and a half or two hours following his arrival. Asked him if he had been at the Riggs Bank or knew anything about this \$5,000 check, all of which he denied. We had the bank men look at him and they all said he was not the man who appeared at the bank with the check. We asked him about his brother and *he denied that his brother had been in Washington.* [Italics supplied.] (Rec. p. 92.)

After Wan had remained at 409 15th Street long enough for certain officers of the Riggs National Bank to come into the room to see whether he was the person who had presented the \$5,000 check purporting to have been signed by Dr. Wong (Rec. p. 61), it was suggested that he be taken to a hospital, but on objection from him he was taken to the Dewey Hotel, and although not placed under arrest was kept under close surveillance.

Wan having expressed a desire to assist the officers in finding the murderers of his friends, he was during the week following his coming to Washington from New York, questioned nearly every day, and sometimes several times a day, by Major Pullman, Inspector Grant, and Detectives Burlingame and Kelly.

(Rec. pp. 61, 64.) For several days of that week Wan did not tell them anything different about his movements just prior to and at about the time of the murder from what he had told them on his arrival at Washington. On Friday, February 7th, four days after Wan had come to Washington with the detectives, Inspector Grant stated to him that the check had nothing to do with the murder, and asked him if he knew who went to the bank. Wan replied that "If you get the man who went to the bank you will get the murderer." (Rec. p. 79.) The Inspector then told Wan that his brother Van had told him that he, Van, went to the bank. At this statement Wan became excited and said "It's a lie," and refused to discuss the subject any further. (Rec. pp. 65, 79.)

During this week Wan had repeatedly expressed a desire to go to the Mission House to look it over. (Rec. pp. 65, 66.)

Accordingly, arrangements had been made to take him there on Friday, but owing to the fact that he had broken his glasses he was unable to go until about 8.00 o'clock p. m. Saturday, February 8th. (Rec. pp. 64-65.) Major Pullman, Inspector Grant, and Detectives Burlingame and Kelly on said evening accompanied Wan to the Mission House, and after they had arrived there Wan and his brother Van, who had also been at the Dewey Hotel under surveillance, were shown where the bodies of the three men were found, during which time Wan asked a

number of questions pertaining to the condition of the house and the position of the bodies when found. (Rec. p. 66.)

After the house had been gone over, Major Pullman exhibited to Wan some photostat copies of his own handwriting and also a photostat copy of a check stub from the check book of the Chinese Educational Mission, upon which stub was written "T. T. Wong, \$5,000." Certain similarities in the forming of the letters on the several exhibits were pointed out to Wan, and he was asked if he would tell who wrote the check stub. After making an examination, Wan said "I think I wrote that," indicating the check stub. He was told by Major Pullman that they did not want to know what he thought about it, and then he, Wan, said that he wrote the entries on the stub. (Rec. pp. 67-93.) For several hours afterwards he was questioned closely about the check and his connection with it, but he refused to make any further disclosures. He was then taken to No. 10 Police Station and there charged with murder. (Rec. pp. 67-68.)

On Sunday, February 9th, after Wan, at his own request, had talked to one K. S. Wang alone, Grant, Burlingame, and Kelly were called in and Wan told them that he saw Wong and Hsie killed by Wu, and Wu killed by a man named Chen. (Rec. p. 68.) Pressed for details he said he was tired and would tell them more next day. The officers then left him. (Rec. p. 68.) In the morning of the day following on



being asked about the details that he had stated he would give, he asked to be taken to the Mission House. Upon arrival at the Mission House he started to explain how he had seen the three men killed. (Rec. p. 68.) He was interrupted and told that he knew that there was no Chen in it; he admitted that this was so, and stated that he had killed Wu, after the latter had killed Wong, and Hsie. (Rec. pp. 68-81.) On the next day, Tuesday, February 11th, Wan was asked by Burlingame if he would make a statement in writing and he said that he would and proposed that Burlingame asked him questions and said he could answer better. (Rec. p. 70.)

He then in the presence of Detective Kelly and his brother Van answered categorical questions propounded to him by Detective Burlingame, all of which were stenographically reported and when transcribed covered 12 pages of the printed record. (Rec. pp. 70, 107, 108-120.)

The notes after having been transcribed were presented to Wan the next day, February 12th, for his signature. After the same was read to him at his request he subscribed his signature thereto. (Rec. pp. 70, 120.)

Before he made the said statement Burlingame *"advised him it was not necessary; any statement he made would have to be voluntary and would be used against him, and he expressed a willingness to make it."* (Rec. p. 70.)

In this form he gave a detailed statement to the effect that he and Wu had planned to forge a check



for \$5,000; that after he had forged the check and Wu had written the letter to the bank in the kitchen of the Mission House, and Wan had put the letter and check in his pocket, Mr. Hsie came in and was shot by Wu, and later Dr. Wong came and Wu shot him also, and that then he, Wan, shot Wu. (Rec. pp. 70, 108.)

Van testified in defense that on receipt of two telegrams from his brother Wan he came to Washington, arriving here about 1.00 a. m. Wednesday, January 29th. About noon that day while he was on the street looking for a place to purchase some pineapples for his brother he met two Chinese named T. P. Wong and Moy, who told him that they had seen him when he landed in Vancouver. (Rec. p. 123.) He walked a little distance with them and then left them. At about six o'clock that night, January 29th, Wan left the hotel stating that he was going to visit some friends, but that he came back to the hotel about eight o'clock. Van then went to a moving picture show returning to the hotel about eleven o'clock and found Wan in bed. Next morning, January 30th, Wan and Van went to the Union Station. Wan sat down and Van went to inquire about trains leaving for New York. He then looked into the men's waiting room and there saw the two Chinese that he had met the day before—T. P. Wong and Moy. Wong told Van that he had a check that he wanted cashed; that he did not speak English very well and wanted Van to help him cash

it. *Wong, who looked like Wan*, and Van got in a taxicab and drove to Riggs National Bank. On the way to the bank Wong gave Van a large envelop and told him if the bank people asked him anything to tell them to telephone his home. (Rec. p. 124.) On cross examination he stated that when he was at the bank he told them to telephone to Professor T. P. Wong's house. (Rec. p. 132.) When he was identified by one of the bank officials he denied that he had ever been to the bank. (Rec. p. 163.) The bank having refused to cash the check, the amount of which Van said he did not know (Rec. p. 132), he returned to the Union Station with Wong. (Rec. p. 125.) Moy was waiting for them and he and Wong engaged in an excited conversation, where-upon Van paid the fare. (Rec. p. 132.) Wan was still waiting for him at the station, but he did not tell Wan that he had been to the bank until they had returned to New York, and only after Wan had said to him that Wu was dishonest. (Rec. p. 125.)

Wan testified in his own behalf that at the request of Mr. Wu he stayed at the Mission House from the 22nd to the 27th of January (Rec. p. 135); that on the latter date, because he was sick and did not like to bother Dr. Wong and Mr. Hsie, he left the Mission and went to the Harris Hotel. He telegraphed for his brother so that he could have some one to wait on him. (Rec. p. 136.) When Kang Li saw him at the Mission House on Wednesday evening, January 29th, he had gone for a package that Mr. Wu told him was there. He found no one at home and left a short

time after seeing Kang Li. He returned to the Harris Hotel and because his stomach bothered him—he was suffering from acute constipation (Rec. p. 159)—he went to bed and there remained until his brother Van returned from the picture show. He then felt like taking a walk, and he and his brother walked a short distance past the Union Station. He did not remember what time it was when he returned. Next day, Thursday, January 30th, about nine o'clock he and his brother went to the station to find out about train time; that Van left him and was gone about an hour; that they left for New York about 10 or 11 o'clock. (Rec. pp. 136–137.) When he returned to Washington it was suggested that he be taken to a hospital, but on objection from him he was taken to the Dewey Hotel. (Rec. p. 139.) At the hotel the officers came to see him every day, asked him a great number of questions and accused him of the murder.

On one occasion Inspector Grant said to him: "Wan, never mind about the murder case, we will leave the murder case alone; we are expecting to find out something about the check," and he, Wan, said: "Mr. Grant, after what you have said, who is the man who went to the bank; who is the murderer?" During the whole time he was at the Dewey Hotel the officers gave him lots of suggestions as to how the killing was done, and finally stated that he would take him to the Mission House so that he could see for himself. He objected to going but the officers told him he had to go if he wanted to meet his brother. (Rec. p. 140.) At the Mission House

he was shown where the bodies were found and the blood spots and the bullet holes (Rec. p. 141); and then Major Pullman took him to the third floor, and handing him some photographic copies of his own signature, including that in the hotel register and his name that he had written for Kang Li, asked him to become a handwriting expert; that he told Major Pullman that each one was his handwriting, and then he was handed the check stub and he said "no." The exhibits were again handed to him and certain features of the various writings were called to his attention, particularly a letter "g" on the stub and the same letter in his own writing. He told Major Pullman that the "g" on the stub looked like his own writing, "Just the end of the 'g' not the whole thing." He told Pullman that the writing on the check stub looked like his writing but was not his writing. (Rec. p. 142.) Major Pullman then left and the other officers kept him there a long time, cursed him freely, and often requested him to confess, but he did not make any statement about killing Wu.

On the following Sunday night the officers again questioned him about the killing, and he tried to remember something, "but yet I can not figure out how to tell them something that is not right." Monday morning he was taken by Inspector Grant and Burlingame to the Mission House and asked to tell the whole story. *He told them they had better question him. Then Burlingame questioned him and*

*he tried to apply those sayings that were told him by the officers as he wanted to satisfy them.* (Rec. p. 144.) When he signed the confession at the jail he knew what he was doing, but he signed it so that the officers would leave him alone. (Rec. pp. 158-154.) No force or compulsion was used to cause him to sign the confession, but it was a suggested confession. (Rec. p. 157.)

#### POINTS AND AUTHORITIES.

Let us at the outset advert to some general principles the consideration of which we hope will dispel some of the fog created by defendant's brief.

It is claimed by the defendant that the principles of the decision in the Bram case were both pertinent and applicable in the highest degree to the facts in the case at bar. This proposition we admit. But what are the principles of the decision in the Bram case? That involuntary confessions are not admissible in evidence against an accused? That because it was inferred from the facts in that case that the confession admitted in evidence was involuntary, a similar or somewhat similar condition of fact produces the same result? These questions answer themselves. Involuntary confessions are and have always been inadmissible as evidence of the commission of a crime. This is the law of the land as announced in the Bram case and recognized and given full force and effect by both the trial and Appellate Court in dealing with the case at bar.

On the other hand no court, not even this Honorable Court in the Bram case, has ever attributed to any set of facts or circumstances, short of a clear promise of temporal benefit, or a threat of temporal harm, the infallible effect of producing an involuntary confession from one charged with the commission of crime. The ultimate question of whether a confession is or is not involuntary is not one of law to be decided by judicial precedent, but one of fact to be decided by the intellect and reason operating upon the evidence in a particular case. Therefore it can not in reason be maintained that because the same inference is not deduced from a superficially similar condition of fact, untrammelled, individual view is substituted for controlling judicial precedent, nor conviction of one charged with a capital offense effected otherwise than in accordance with law.

The value of a judicial precedent is derived from its substance rather than its form. The position of the defendant is that the Bram case denounces as inadmissible every confession made in answer to an accusatory question. In substance it denounces only confessions not voluntarily made. But in arriving at the conclusion that the confession in that case was involuntary this court dealt solely with the facts in the case. For in dealing with the question the Court stated:

In approaching the adjudicated cases for the purpose of endeavoring to deduce from them what quantum of proof, in a case



presented, is adequate to create, by the operation of hope or fear, an involuntary condition of mind, the difficulty encountered is, that all the decided cases necessarily rest upon the state of facts which existed in the particular case, and, therefore, furnish no certain criterion, since the conclusion that a given state of fact was adequate to have produced an involuntary confession does not establish that the same result has been created by a different although somewhat similar condition of fact.

\* \* \* \* \*

The first of these statements but expresses the thought that whether a confession was voluntary was primarily one of fact, and therefore every case must depend upon its own proof.

*Bram v. U. S.*, 168 U. S. 532, 548-549.

The duty in determining from the facts in evidence whether a confession is or is not voluntary devolves in the first instance upon the trial court which must necessarily be vested with a large discretion in the matter. In the case of *Hopt v. Utah*, 110 U. S. 574, 583, this court in discussing the admissibility of confessions said:

The admissibility of such evidence so largely depends upon the special circumstances connected with the confession that it is difficult, if not impossible, to formulate a rule that will comprehend all cases. As the question is necessarily addressed in the first instance to the judge, and since his discretion must be controlled by all the attendant circumstances,



the courts have wisely forborne to mark with absolute precision the limits of admission and exclusion.

And in a very recent federal case by the Circuit Court of Appeals for the 9th Circuit the rule was announced as follows:

But where, on the trial of a criminal case a confession of the defendant is offered in evidence it becomes necessary for the trial court to ascertain and determine as a preliminary question of fact whether it was freely and voluntarily made and whether the previous influence, if any, had ceased to operate upon the mind of the defendant. In doing so the court is necessarily vested with a very large discretion which will not be disturbed on appeal unless a clear abuse thereof is shown.

*Mangum v. U. S.*, 289 Fed. 213, 215.

See also *Brady v. U. S.*, 1 App., D. C. 246.

*Hardy v. U. S.* 3 App. D. C. 36, 46.

*State v. Hopkirk*, 84 Mo. 278, 284.

*State v. Rogoway*, 45 Ore. 601.

*State v. Squires*, 48 N. H. 364.

We now propose to deal with the facts in the case at bar with a view of ascertaining whether defendant has maintained his two major propositions, viz:

(A) That the general situation and the remorseless and accusatory questioning of the defendant by the police officers, irrespective of any specific promise or threat held out to the defendant, rendered each and every one of the confessions inadmissible under the doctrine of the *Bram* case. (Defendant's brief, page 36.)

(B) That specific statements implying threats or promises were made to the defendant by persons in authority. (Defendant's brief, page 71.)

What does the evidence show was defendant's general situation?

He is found by Burlingame and Kelly in his boarding house in New York writing a telegram of condolence to his friend, Kang Li. He was told by those officers that they were investigating the death of Dr. Wong.

\* \* \* defendant had expressed a wish to go to Washington, might be something he could do to assist in locating the murderers of his friends; \* \* \* said he would like very much to go, would go, but did not have any money; witness said he would be glad to pay his expenses, and defendant said did not think his physical condition would permit it; might need medical attention, his stomach was bad, could only eat certain things at that time, mostly fruit, and might not be able to get proper food; witness assured him would pay his expenses and see that he got proper medical attention if needed (Rec. p. 59); \* \* \* after some conversation defendant consented to be dressed, put a few things in a suit case and then left the house (Rec. p. 60).

After he arrived in Washington he was taken to 400 15th Street Northwest and Major Pullman questioned him.

\* \* \* said he left Washington on the night of the 29th at 8.15 and there was quite

a little talk; defendant said Mr. Wu had gone to the station with him; Major Pullman told him that could not be possible because he knew where Mr. Wu was; defendant said Mr. Wu got some fruit and defendant ate it at the station, and when pressed he was assured it was impossible that he should have left at 8.15, and defendant refused to talk any more about it at that time. Defendant was asked by Major Pullman if he took a check for \$5,000 on the Chinese Educational Mission to the Riggs National Bank and attempted to get it cashed; he denied it and denied knowing anything about the check, and the Major told him "we are going to bring the bank men to see if they could identify you," and defendant said "Bring the bank men, let them see me and they will tell you they never saw me. \* \* \*." Had defendant practically detained at the Dewey Hotel with a man on guard in the room with him; he was taken to the Dewey Hotel because of his physical condition, and the poor arrangements we had around the District Building and the police stations; one reason was, wanted to keep people from seeing him; defendant did not ask for a lawyer at any time; defendant asked on two or three occasions to see his brother \* \* \*. Witness said he understood a doctor had been called in, up to the following Thursday or Friday several times (Rec. p. 61); witness asked that it be done on account of defendant's physical condition, to live up to witness' promise to him; witness had promised Wan

that he should have nothing but proper food and medical attention (Rec. p. 62) \* \* \*.

The triple murder was talked over and discussed in almost every way imaginable; defendant asked the officers a number of times to describe just how the dead bodies were found, where each body was found, during that week at the hotel, and he would ask on two or three occasions to be taken up to the house; he wanted to see the house again to see how everything was around the house, and in reply to one of those requests we told him we would take him to the house and the arrangements were made to take him there on Friday, and then he broke his glasses and did not want to go (Rec. p. 64) \* \* \* unless he could see everything plainly; the glasses had been sent to be repaired, and he got them back, and we took him there at his request on Saturday (Rec. p. 65).

In response to questions of the Court the witness Burlingame stated:

\* \* \* to his knowledge or information, no promise or reward or hope of immunity was offered to defendant to make any statement, and every statement he made was voluntary; there was no threat, no promise, no harsh means to extract any statement from him under any promise or anything; there was nothing beyond his confinement and being rendered immune from other people and the questions; that he had stomach trouble, but he would be up and around; he sat up in bed a great deal; his mind was clear (Rec. p. 65)

\* \* \* you probably might call the defendant's ailment acute constipation (Rec. p. 159).

On cross-examination Major Pullman testified:

First saw Wan at the 15th Street house when they came back from New York, should say about 9 o'clock, may have been 6 or 7; witness thanked Wan very much for coming here, realized we had a very difficult thing to solve, wanted Chinese help, asked him to give all the information he could about the men personally, and about his stay at the mission house, which he did; said Dr. Wong was one of his great friends, practically a guardian, that the last word his mother had said to Dr. Wong when he came over here was to take care of this boy; seemed to have very high regard for Dr. Wong and the other men, but particularly for Dr. Wong, who was very eminent in China. When defendant admitted he was in Washington on Wednesday and left at 8.15, witness told him he had stated he had come here to Washington to help us in this investigation, and had started off by apparently showing bad faith in telling two falsehoods, the time he left and having dinner with Wu. Kang Li was present this time, noticed no coolness between him and defendant; conversation lasted about twenty-five minutes, "because we had to talk to these men in language they could very plainly understand; they knew English quite well, but some expressions we used they did not catch; it was a very much slower task of interviewing than it would have been with you

or any one else speaking perfect English." Defendant was taken to 409 15th Street because it was quite desirable to interview him in privacy, "he was not a prisoner \* \* \*; he was merely a friend of the dead man who had come here to help us \* \* \*; we were bringing him here as our guest; we did not think him guilty of the murder when we (Rec. p. 95) brought him here;" the newspapers had come out that afternoon and published the fact with his picture that we had the man we thought guilty; we did not think so at the time we brought him here \* \* \*.

Had the bankmen come and look at Wan one by one, and go out without saying whether he was or was not the man; it was after they left the room that they said he was not the man; defendant insisted all along that he knew nothing about the check and was entirely innocent. At witness' direction defendant was taken to the Dewey Hotel; Wan was permitted to use the long-distance telephone to New York; asked if it was at witness' direction that a guard was placed at the Dewey Hotel, answers, "it was our directions that a man was to accompany him and be with him at any time, at all times, rather. This guard was changed three times a day; throughout the whole thing he had been in a perfectly good humor with me and most of the others." Witness brought Wan papers—Washington and New York papers. Criticised witness one day for not bringing him the papers, and another time for not dropping in. His brother arrived on Monday. Witness



had numerous conversations with defendant on every subject—international politics, the League of Nations, Chinese customs, literature, and everything else. Witness did not ask him if he believed in God; he volunteered the information that he was a student at St. John's College, Shanghai, which he told us was an Episcopal college; told witness he was a Christian. \* \* \* "We asked him if he wanted to go to a hospital, and he did not; and we wanted to know if he wanted a doctor, and he said no, but wanted to get some medicine he had in New York."

Physicians saw him fully four times. \* \* \* "he had rather a curious desire to see where the men had been killed. One day he broke his glasses; another day he wasn't feeling well. Finally, Saturday came and we decided to take him there"; did not promise him he would see his brother, but "we told him his brother might be there at the same time." His brother was at the Dewey Hotel at the same time; did not permit them to see each other, because neither of us spoke very good Chinese, and we knew if these boys once began talking Chinese to one another our investigation of the case might end right there (Rec. p. 96), although both of them had come here with the statement they came to help us, and we wanted them to help us individually and uncontrolled by any one else; \* \* \* He wanted to see where everything had been done and asked a number of questions; thinks the pictures were shown to him; we told him about the glasses at the bottom of the staircase; that Dr. Wong's body had



been found upstairs on the reception hall floor, indicating that he must have been shot and he had struggled upstairs; that things were in a topsy-turvy condition in the little central room—lamp shade turned over, and so on; is not sure the glasses are Dr. Wong's glasses; the chair on which the pistol had been placed was shown to him; perhaps the pistol was on the chair that Saturday night; he may have handled the pistol; pointed out to him the bullet hole in the wall; does not recall whether his attention was called the glancing bullet blow on the table. \* \* \* defendant is a man who talks now and then; there were no rapid-fire questions, they were slow questions; thinks he was shown the pictures showing the position of the bodies; \* \* \* (Rec. p. 97) moved Wan and Van up to third floor, because some one came in and said there was a crowd of people watching down stairs at the door to see if they could look in and get in, and they could over hear anything being said.

On the third floor, front, we slowly proceeded with the questioning; we asked them about their movements and about the check; they were treated with the utmost consideration; we asked defendant where his brother got the check which he presented to the Riggs Bank; his brother Van had been identified by the bankmen as having presented the check for \$5,000, "and we wanted to know where Van got the check"; Wan had told about a mythical fellow by the name of Chin or Chen who had given Van the check down at the

Union Station on Thursday as they were getting into a taxicab; said the man had stopped the taxicab suddenly and spoke first as if he was a stranger and then said he knew them, and defendant said he was an awful fellow who had taken his satchel from him in New York; pretty soon he stopped talking and waited for us to go on (Rec. p. 98); was not satisfied with Wan's statement about the man stopping the taxicab; did not say no such man as Chin existed, for such a man did exist; when defendant was asked about the handwriting, does not recall a complaint about being ill.

Defendant asked to be let alone when he was looking at the handwriting; at no time did he complain about the questioning; \* \* \* witness said to defendant, "Wan, the stub, as you see here, is made out to Dr. Wong; the check your brother Van presented in bank was made out to bearer; that was the information given to us by the Riggs Bank officials; now, we want to know whose handwriting this is \* \* \*; you told Inspector Grant yesterday, Thursday, that the man who wrote—'You find man wrote the check, you find murderer' \* \* \*; you realize that we ought to know who wrote this stub," and he said at first he did not know, then took the other specimen, the check book, turned to stub 24, and witness told him to look at it, look at the "w" on all the specimens, very distinctive "w," just a plain mark up and down; look at the "g" which goes up in the air, and, what is more important, look at the spacing of the letters,

and so on, and he said, "Let me have it and let me alone," and after a few minutes defendant said, "I think that my writing," indicating the stub, which was a very important admission; witness said, "We do not want to know what you think, we want the truth and all the information that you and your brother can give us," and he said, "That is my writing," indicating stub again; \* \* \* (Rec. p. 99). "The stub was plainly his handwriting, \* \* \*."

On cross examination Inspector Grant testified (Rec. p. 83):

Witness did not tell defendant at 15th Street house that he was the one who took the money, killed the men. \* \* \* Witness was not so blunt in the case as to tell defendant at the 15th Street house that whoever cashed the check was the murderer; witness did not say that; did not put anything like that to him the first night; did not come at him and accuse him of the murder like a green policeman on the force two weeks. \* \* \* The first night defendant was asked if he had been to the bank with the check; was told that the members of the mission had been found dead, and on Thursday morning this check was presented to the bank; \* \* \* witness saw defendant Sunday morning at the hotel about 11 o'clock; does not recall who was with witness; remained a half hour or so; defendant was lying in bed; perhaps went again that day with Major Pullman; asked him several ques-

tions about the case; made no suggestions about how it happened at (Rec. p. 84) that time. \* \* \* Told defendant he was the last man in the house; \* \* \* witness talked with defendant's brother and would then go and talk with defendant about the things that asked his brother about, about the case—various conversations about various things; would sit and talk sometimes an hour or more, taken up largely with things defendant wanted to talk about. He was very much concerned about his brother and his brother about him; told him his brother was well; he wanted to see his brother, "but we told him that we would let him see his brother at the right time." \* \* \*

On Friday, February 7th, Van told witness he had been to the bank, and within the next fifteen minutes witness went to see Wan; asked him to tell witness who the man was that went to the bank; that it had very little bearing on the matter; did not have much bearing on the matter of the murder; asked him to tell witness who it was, and he said, "You say that it has not much bearing on the case; if you get (Rec. p. 85) the man that went to the bank, you get the murderer," and then witness said, "know who it was that went to the bank"; then he rolled his eyes around and said, "Who?"; then witness said "Van went to the bank and he told me so." Wan got viciously mad, pounded the bed, and said he would say no more. Witness knew before asking him, from what Van had said, that the latter had been to the bank but

did not tell defendant; the first remark Van made about the bank was, "they fool me," and he told witness this story about going to the bank at the Dewey Hotel; in this conversation had asked Van about the telegram he had received to come here; Van said he thought it was to get a job, and cried and told witness about their fooling him; can not remember the entire conversation.

Van did not say anyone went to the bank with him; \* \* \* defendant "expressed a desire" to go—the mission house; \* \* \* that was on Monday morning, it was earlier than Friday that he expressed the desire; asked if it was not a fact that witness told him he would see his brother at the mission house, says, "Perhaps I did; yes." Asked if it is not a fact that all through that week, from February 1st to the 9th, when a statement about the check was made, witness, Kelly, and Burlingame would question him a half hour at a time, telling him to tell how the thing happened, and shaking their fingers in his face, answers, "Well, we were talking with him sometimes a half or three-quarters of an hour, but at no time were we talking to him that long about the crime. \* \* \*"

We would branch off on some other subjects and then would come back to the case; he was in bed most of the time, but lots of times he seemed pretty lively in bed. Was never at the Dewey Hotel after 12 o'clock at night; took defendant to the mission house that particular Saturday night because "we wanted to do everything we possibly could to close

the case. It had been hanging for a long time, and we just thought the best thing to do would be to take him to the house, as he had expressed a desire to go to the house, and take him there on this particular night and let the two brothers meet and see what they would have to say." \* \* \* On reaching the mission house, took the defendant over the whole scene; showed him some bullet holes in the kitchen in the wall.

From the foregoing rather full résumé of the testimony touching defendant's general situation it is obvious that he was not, as claimed in his brief, held incomunicado, but was housed in a public hotel, used the long-distance telephone to New York, was visited by a physician, and with the exception of not seeing his brother he had every request gratified. Nor can it be truly said that he was continually questioned. He was questioned about the triple murder. Indeed, he asked many questions about it himself. He came to Washington for the purpose, so he stated, of giving what assistance he could in finding the murderers of his friends.

Since it is earnestly maintained in defendant's brief that his general situation was analogous with the situation presented in the *Bram* case, let us for a moment examine the facts in that case to see whether defendant's contentions are substantiated.

In the *Bram* case a double murder had been committed on the high seas on a ship of which Bram was an officer. Bram was brought to Halifax in irons and placed in confinement to wait an investigation by

the United States Consul of that port. While awaiting this investigation Bram was caused to be taken from the jail where he was confined to the private office of the police detective. When there alone with the detective he was stripped of his clothing, and, either while he was being stripped or after he was denuded, the detective told him that one Brown had made a statement that he saw Bram commit the murder. In this situation Bram stated, "He could not have seen me. Where was he?" And on being told he was at the wheel, Bram replied, "Well, he could not have seen me from there." *Bram v. U. S.*, 168 U. S. 562.

It is respectfully submitted that the situation of Bram was in no wise analogous to the situation of defendant. Bram had been put in fear. As was stated in a recent Federal case by the Circuit Court of Appeals for the 7th Circuit, in *Murphy v. U. S.*, 285 Fed. 801, 812:

What significance must be given to the words "he was stripped of his clothing," which Justice White emphasized by italics? When one accused of murder on the high seas is brought before a police officer in a foreign port, what deductions can be drawn from being stripped of his clothing prior to a demand for a confession? Could he or any other person conclude other than that a flogging would be inflicted if the statement was not satisfactory \* \* \*

Not only did the accused act under conditions which "perturbed the mind," but he



made a denial which contained a negative pregnant, and it was this latter statement that was construed as a confession. There was fully as much justification for rejecting this statement, because of the confusion over its meaning, as there was in rejecting it for the circumstances under which it was given.

Much stress has been placed in defendant's brief upon that part of the opinion in the *Bram* case wherein this Court stated that the statements of Bram were not made by one who in law could be considered a free agent. The term "free agent" has been seized upon in defendant's brief as meaning the opposite of any kind of custody or detention. We submit, however, that no such inference arises from the opinion. We respectfully submit that this honorable Court never intended to go so far as to say that a confession by one in custody of an officer questioned from time to time about a matter of which the circumstance showed that he had some knowledge would render a confession involuntary, and therefore inadmissible.

What defendant's brief attempts to do is to show that he was persistently questioned. To use their expression, "he had to talk." And in that connection many references are made in the brief about a statement by Inspector Grant on cross examination that defendant had to talk. This method of taking out of its general picture some expression and dissociating it from the rest of the testimony will not bring the defendant's situation to the situation presented in the *Bram* case.

It should be noted that when Grant said he had to talk, he merely used the expression as conveying the idea generally that everyone has to talk; that is to say, they can not, as rational beings, forever remain silent. That this is clear is shown from the fact that counsel conducting the cross examination did not ask the witness whether the defendant had to talk about the case. On this point the testimony shows that many times Wan stated to the officers that he did not want to talk any more, and when he did they left him alone. The most striking illustration of this is when he told them on Sunday night that he had seen Wu kill Hsie and Wong, and Chen kill Wu, then announced that he was tired and did not want to tell them anything further that night, the officers let him alone. If they had been pressing him with accusatory questions with the intent to wring from him an unwilling statement about his knowledge and connection with the crime, that is the time when they would have stayed by him and persisted in an effort to make him talk.

An inspection of the record at every point where defendant's brief claims that he was persistently questioned and made to talk will make it clear that whatever might have been their persistence in the particular instance and at that time, he did not talk. All of these circumstances show that defendant talked when he wanted to talk and refused to talk when he did not want to talk, which shows that he was a free agent.

The cases cited and quoted from in defendant's brief plainly show that from the facts and circumstances related in them, that the statements were involuntary and were induced by the hope or fear.

B. Defendant's second major proposition is that the police officers during the course of their investigation made to him specific statements implying threats and promises. Several of these so-called promises and threats have been set forth on pages 71 to 76 of his brief. These will be dealt with in the order raised. The first statement alleged to have held out either a promise or a threat (defendant has not told the court whether it was a threat or a promise) is alleged to be contained in the excerpt from Grant's testimony appearing on page 72 of defendant's brief in which is the statement of Grant that "If you are guilty and your brother is innocent, now is the time to tell it; I want to know;" \* \* \* appealed to the better side of his nature; "told him that things looked pretty black for him, that we had talked this thing over and the developments showed me that he knew more about the crime than he was telling, and I asked him for the truth;" told him "the investigation so far looks pretty black for you; tell me the truth;" \* \* \* told him a lot of things, but never offered any inducement, because witness has had too much experience in that line.

Q. And this was what you meant by saying that you appealed to the better side of his nature—by telling him that the investigation looked awfully black and that he had better tell you the truth?

A. Yes; I thought if he told the truth about it, it would be the proper thing for him to do under the circumstances.

By an inspection of the passage from the opinion in the Bram case quoted and relied on by defendant it appears that he contends that Grant's statement held out a hope to him of some benefit to be derived by making a statement, that is to say that he was offered an opportunity of shifting to another direction the suspicious circumstances that pointed directly to him, and it is claimed that he availed himself of this opportunity by shifting the blame to Wu and Chen.

We submit, however, that Grant's statement did not hold out any such hope. Wan was told all of the facts that the detectives had learned about the case, and the facts thus told him could not have been calculated by any stretch of the imagination to lead him to believe but one thing, namely, that his guilt could no longer be concealed. The hope alleged to have been held out is not the kind of hope that is considered by the law. The hope considered by the law is something held out by one in authority to an accused as a favor, a benefit, or a payment, so to speak, for an acknowledgment of guilt. All that was done by Grant was to state the known facts to Wan. If as a result of this Wan embraced what he conceived to be an opportunity of diverting suspicion from himself to another and thereby made a statement from which with other facts guilt might be deduced, such statement was nevertheless voluntary.

While it is true that he might not have made the statement had not Grant told him those things, it was his free voluntary act.

Nor do we find any analogy in the *Bram* case to the facts surrounding the statement of defendant that he saw others commit the crime. In the case at bar the defendant was told that "The investigation so far looks pretty black for you," which was merely an expression by Grant of his opinion, whereas in the *Bram* case the accused was told that Brown had made a statement that he saw the accused commit the murder, which statement of necessity called for an expression in the nature of an explanation. Wan was not placed in any such situation for the reason that he had to make no reply to Grant's expression of opinion. His silence would not have been evidence against him had he not made a response.

The next contention concerning defendant's proposition is that Grant induced a statement by telling him that he had better tell the truth. We deny that the record shows that Grant made any such statement. What Grant did say to him was to tell the truth. What the record shows is that Grant was asked if this was what he meant by saying that he appealed to the better side of his nature by telling him that the investigation looked black and that he had better tell the truth. And Grant's answer was that he thought that if he told the truth about it it would be the proper thing for him under the cir-

cumstances. Here, again, we have an illustration of taking from its context and its background an expression and construing from it a meaning that it does not have when taken with the rest of the language to which it belongs. But even if Grant had told him it would be better to tell the truth, this fact alone would not render the statement thereafter made inadmissible.

It is true that in some of the early English cases it seems that such an admonition would render a confession involuntary. It seems to have been supposed at one time that saying "Tell the truth" meant in effect "Tell a lie." *Queen v. Reeves*, L. R. C. C. 362.

In *Reg. v. Garner*, 3 Cox, C. C. 175, Earle, J., said:

I believe several judges have held, and it is certainly my opinion, that an exhortation to tell the truth can not be considered as an inducement to confess untruly, but it is for the judges at the trial to decide upon all the circumstances whether the words were used so as to operate upon the mind of the prisoner as an inducement to confess untruly.

In the *Murphy case*, *supra*, the Circuit Court of Appeals for the 7th Circuit in discussing the effect of an admonition that it was better to tell the truth stated, "The expression 'better tell the truth' and 'better be frank' and 'it will be best for you to tell the truth' have been before the courts on many occasions, and the majority have held them not sufficient to defeat the admission of the confession."

*Aaron v. State*, 37 Ala. 106.  
*Huffman v. State*, 130 Ala. 89.  
*King v. State*, 40 Ala. 314.  
*Steele v. State*, 83 Ala. 20.  
*State v. Kornstett*, 62 Kans. 221.  
*Heldt v. State*, 20 Nebr. 462.  
*People v. Kennedy*, 159 N. Y. 346.  
*Fautz v. State*, 8 Ohio State 98.  
*Rozcryniala v. State*, 125 Wis. 414.  
*Queen v. Reeves*, L. R. C. C. 362.  
*State v. Staley*, 14 Minn. 105. ?  
*State v. Anderson*, 96 Mo. 241.  
*Heintz v. Wisconsin*, 125 Wis. 405.

**THE MAN WHO WENT TO THE BANK WAS THE MURDERER.**

The purpose and function of all law is to serve and not subvert the ends of society. One of these ends is to denounce and punish those persons who wrongfully take the life of one of its members. For the purpose of establishing a basis upon which law may operate, we have rules of evidence designed solely for the ascertainment of truth. Although designed and calculated, so far as human experience can judge, to effect this purpose, it can not be said that these rules are all sufficient to exclude falsehood and educe only truth. This deficiency, arising as it does out of the diversity and inequality of the human intellect and judgment, is amply supplied, however, by the unanimous concurrence of the 12 minds of a jury.

Viewed in the light of these fundamental concepts, defendant's brief presents some very peculiar, if not startling, propositions. Stripped of all their outward



limbs and flourishes, and stated simply and directly, the position assumed and propositions asserted by him may be briefly summarized as follows:

When the facts and circumstances surrounding the commission of a crime points the finger of suspicion to a person, that person may not be placed under surveillance nor in custody for the purpose of ascertaining what he knows about the crime. If placed under surveillance or in custody, he must neither be told the facts and circumstances in the case nor be asked what he knows about it. If he is placed under surveillance or taken into custody, he is not, says the defendant, a free agent. Therefore whatever he may say about his connection with the crime is inadmissible against him.

Or, stated in another way, that because he is suspected of crime, the law, says the defendant, surrounds him with protection that is denied to any other member of society. If he is told of the facts and circumstances which placed him under suspicion, or is told that he is under suspicion, it is then claimed that because of the accusatory nature of the question, or the information conveyed to him, that anything he might state is involuntary.

The most startling part of defendant's position is that he claims that these propositions have been moulded into judicial precedent by the decision in the Bram case, and that brings us to the point where we desire to briefly present to this Honorable Court our analysis of the *ratio decidendi* in that case.

From a reading of that rather voluminous opinion it is clear that the decision was rested upon but two grounds: (1) That Bram was put in fear, and therefore deprived of the freedom of mind as a result of being brought to the detectives' office and denuded of his clothing, and (2) that he was told that one Brown had seen him do the murder, thereby placing Bram in the situation where, if he remained silent, his silence might be used as evidence against him, tending to establish by conduct an admission of the crime. He was thereby compelled to speak out about his connection with the crime. The introduction in evidence of the statement thus made by him amounted to forcing him to give testimony against himself in violation of the Fifth Amendment of the Constitution.

As has already been adverted to in this brief, defendant seized upon the first reason for the ruling and maintains that because Bram was in custody he was not a free agent, and that it follows as a matter of established judicial precedent that the defendant, being in custody or what amounted to custody, was not a free agent. He also seizes upon the second reason of the decision, and says that the mere fact that Bram was accused or asked an accusatory question, his subsequent statement was involuntary, therefore, the defendant's statements, being made in response to Grant's accusatory questions are also involuntary. While his argument on this subject covers many pages of printed matter, the foregoing really states his contentions before this court.

Before closing our brief on this phase of the case, we desire, at the expense possibly of being tedious, to briefly review the facts and circumstances surrounding these statements made by the defendant, the admission into evidence of which is claimed deprived him of the benefit of the law of the land.

It will be recalled that his first statement was to the effect that if the officers found the man who went to the bank they would find the murderer. This statement was not made in answer to an accusatory question; rather to a question that sought to convey to Wan's mind that he was not guilty, nor can it be said that Wan could have believed that had he remained silent on this point his silence would be evidence pointing to his guilt.

It is true that he was in a sense physically detained in custody—not permitted to go at will. But that is not the kind of lack of freedom that was mentioned in the Bram case. There Bram was not mentally free, because of the threat and menace that had been presented to him as a result of his situation. But no such inference can be drawn in favor of this defendant. He had voluntarily come to Washington, he said, to assist the officers; he had voluntarily acquiesced in going to the hotel; he had never complained of the presence of officers there with him; he had been offered no threat of any kind of harm, but according to Major Pullman had been in a good humor all the time about the matter. Mentally, therefore, he was what the law calls a free agent when

he told Grant that if he would find the man who went to the bank he would have the murderer.

**DEFENDANT WROTE ENTRY ON CHECK STUB.**

Several times during the week that he had been under detention at the Dewey Hotel, the defendant had expressed a desire to go to the Mission House to see how everything was there. He had been unable to go earlier in the week for the reason that he had broken his glasses, but on Saturday night, February 7th, he was taken to the Mission House, denominated in defendant's brief as "the house of the dead." The testimony clearly shows that there was nothing in this action to deprive defendant of his freedom of intellect and thought, but, on the contrary, it was rather in the nature of a gratification of a desire that he had theretofore expressed. Having said that he wanted to go there to see the condition of the house, the most natural thing in the world was for the officers to show him about the house and at the same time to explain to him what they knew about the murders. There was nothing in this to deprive the defendant of his freedom to remain silent or speak out. The record shows that the defendant remained silent most of the time, only stating occasionally, "That is too bad. I am sorry."

The record also shows that during this time he was not questioned. He was merely told that the officers knew about the situation. After he had been shown over the house and told all the details of where the bodies were found, shown the bullet holes, and the

condition of the house generally—which must have occupied some considerable time—he was taken upstairs, and there was exhibited to him photostat copies of several specimens of his own handwriting, and either the original stub or a photostat copy thereof of a bank book of the Chinese Educational Mission, on stub 24 of which there was indorsed, "T. T. Wong, \$5,000." These same exhibits were later produced in evidence, and they were all, including said stub 24, unquestionably in the defendant's handwriting. Defendant does not maintain that being confronted with these handwriting exhibits deprived him of his freedom of action, or held out to him any threat, so it is not necessary to discuss the evidence to show that this was the fact. After being presented with these exhibits, the defendant went over them carefully. The similar characteristics and the similar writings were pointed out to him, and after he had made what appeared to be a careful inspection, he first said that he thought he wrote the indorsement on the check stub. He was told the officers wanted to know who did write that; they did not want to know what he thought, but they wanted to know whether or not he did write it. Thereupon Wan said that he did write it.

So far there has been no coercion, no threat, no harsh means, and no depriving the defendant of his free will in the matter. Defendant's position, however, is as stated in his brief at great length, that he was kept in this house where the three men were

killed and continually questioned throughout the whole of that night. Admitting to the full extent, defendant's inference from the record, it still does not prove that his statement concerning the writing of the check stub was involuntary, because whatever mental anguish he might have suffered as a result of continuous questioning from the time he made that statement until the next morning, there was little questioning done before he made the statement.

Our position is, that even if he had been threatened and menaced after he made the statement about the check stub, his condition of mind at the time of such threats and menaces could not be considered in passing upon the state of his mind at the time he made the admission and before such threats and menaces, if any such had been made. It is therefore clear that defendant was a free agent when he stated that he wrote the stub, and his statement to that effect was not influenced by either hope or fear, and therefore voluntary.

**STATEMENT THAT DEFENDANT SAW WU KILL WONG AND HSIE, AND CHEN KILL WU.**

On Sunday evening, February 9th, the record shows, according to the testimony of Burlingame, that Inspector Grant, Burlingame, Kelly, and one K. S. Wang, at about 7 o'clock in the evening, were at the police station where Wan was confined, and that Wan expressed the desire to talk to K. S. Wang by himself. He was allowed to do so. After a short time the police officers were called back and

were told by the defendant that he had witnessed the killing of the three deceased persons attached to the Chinese Educational Mission, and that Wu had killed Dr. Wong and Mr. Hsie, and then one Chen had killed Wu. He was then asked about the details of the killing which he said he had witnessed, but he said that he was tired, wanted to go to sleep and would talk no more that night, that if they would see him the next day he would tell more about it. Thereupon the officers left him to himself. (Rec. p. 68.)

We submit that this action on the part of the officers demonstrates that the defendant was not persistently questioned, harassed by accusations, or pushed into a corner, as claimed in defendant's brief, but that he was treated considerately, as the testimony of all the officers verifies.

**STATEMENT THAT WU KILLED HSIE AND WONG, AND  
THAT WAN KILLED WU.**

On the following day, Monday, February 10th, Grant and Burlingame interviewed the defendant at the police station where he was then confined, for the purpose of hearing the details of the killing that Wan had told them he would give. The defendant then stated that he desired to be taken to the Mission House; that he could explain better on the spot. When taken to the Mission House he started in to give the details of how he had seen the three men killed. During his statement Inspector Grant stated to him in effect, that he was putting Chen in it and



that he knew there was no Chen in it. Thereupon the defendant made the first statement in which he acknowledged his participation in the case, stating that he had killed Wu after Wu had shot Dr. Wong and Mr. Hsie.

In connection with this statement we submit that the record shows that the defendant was not coerced or menaced into making a statement, nor was he offered any hope, or given any promise, either in manner or expression, of benefit by those to whom it was made. On the contrary, it clearly appears that after a night in which to reflect upon the matter, he made his statement freely and voluntarily, at the scene of the murder to which he was taken at his own request.

**DETAILED STATEMENT STENOGRAPHICALLY REPORTED,  
TRANSCRIBED, AND SIGNED BY WAN.**

As has heretofore been stated, on Saturday, February 11th, Wan was asked by Burlingame if he would make a detailed statement to be taken down in writing and signed by him. At the same time Burlingame "advised him it was not necessary. Any statement he made would have to be voluntary and would be used against him, and he expressed a willingness to make it." Burlingame asked him to tell the story in his own way, and the defendant said, "No, you ask questions, I answer it better." (Rec. p. 7.)

In this form, the defendant made the statement which appears at pages 108 to 120 of the record. This lengthy statement was transcribed, and on the day after it had been made it was taken and read over to

him at his request at the jail. He said that it was his story, whereupon he signed it. (Rec. p. 7.)

Defendant's brief at some length endeavors to demonstrate that the statement on its face shows that it was not the defendant's confession, but amounted to no more than words put into his mouth by Detective Burlingame. We submit this position is not maintained. There are many instances throughout the statement in which the defendant refused to accept Burlingame's lead, but stated that it was not done that way, but in another way.

**IT APPEARING UPON THE EVIDENCE THAT THE ADMIS-  
SIONS AND CONFESSIONS WERE VOLUNTARY, IT WAS  
PROPER TO SUBMIT THEM TO THE JURY FOR ITS CON-  
SIDERATION.**

Without so stating, defendant's brief takes the position that confessions are presumptively inadmissible, and that the Government in this case was under the burden of establishing its voluntary character before it could be admitted. There are to be found some decisions to this effect, but we submit this is not the rule in Federal courts. In the latter courts there is no such presumption against a confession. The rule is, however, that if it appears from the evidence that a confession was in fact involuntary, it is inadmissible as evidence against the accused. *Murphy v. United States*, 285 Fed. 801-807.

The evidence, the full integrity of which can never be reflected in the bill of exceptions, touching the facts and circumstances surrounding the making by the defendant of the several statements, was heard by

the trial court as it fell from the lips of the witnesses. It was his duty in the first instance to determine whether or not this evidence established in any degree that the confession was involuntary. The Court found and ruled that the statements were not involuntary, and that therefore should be admitted into evidence to be considered and determined by the jury.

The jury were fully instructed that if they found the confession was not voluntarily made they should entirely disregard it. The trial court's charge upon this point is, in part, as follows:

That brings us to the subject of the confession. The highest court in our land has declared that a confession—I am going to read the exact language—"if freely and voluntarily made, is evidence of the most satisfactory character." That is the decision of the Supreme Court of the United States.

You will notice the language "if freely and voluntarily made." That means, of course, the word "voluntary" is rather obscured to my mind by definition than elucidation. We all know what "voluntary" is—the free act of the will to do this or that thing, and not a will driven or compelled by another. I say again I hardly think that explanation or exposition can add anything to the word "voluntary." We know whether we act voluntarily or whether we do not; and so, in the law of confessions, which, as I say, are regarded most highly, if they are freely and

voluntarily made, we have to inquire in every case whether a confession is free and voluntary.

\* \* \* \* \*

"The jury is instructed that the burden of proof is upon the Government to prove, beyond a reasonable doubt, that the oral confessions and admissions testified to by its witnesses and the written confession read to the jury were of a voluntary character, and that said confessions and admissions were made by the defendant freely, voluntarily, and without compulsion or inducement of any sort.

"The jury are instructed that in determining whether or not said confessions or admissions were voluntary, the jury may take into consideration the facts, if they find them to be facts, that the defendant, when he made the said confession or admissions, was in the custody of the police; that the police repeatedly questioned him and importuned him to talk about the case; that he was ill; that he was under guard, and not permitted to communicate with his brother or other persons than the police and doctor; and that the defendant was not warned that the confessions would or might be used against him or that he was not obliged to make any incriminating statement."

Now, that instruction, while containing again what we might call an abstract statement of law, might be very misleading, and in order that you might have what I consider to be law upon the subject, I will, in my own language, give you what I take to be the law relating to confessions. It is not only the

right, but it is the duty of the officers of the law to examine and question those whom they (fol. 160) have reason to suspect are guilty of a crime. If that were not the rule, their duties to the community would not be performed. Nor does that fact that they are officers, and in uniform, if need be, make any difference about their right to examine or question defendants. Nor does the fact that they do not warn the defendant that he need not talk, and that what he says may be used against him. That fact in itself does not invalidate a confession. That might not apply in this case, for the reason that, apparently, from the written confession here, this defendant was warned that what he said might be used against him. But no one of those facts, standing alone, invalidates a confession or prevents its admissibility.

The test of the case, and the inquiry that you will have to make in answer is: Did the questioning, did the physical condition, did the importunate questioning, if you choose to call it so, render the confession made by this defendant not his own; but did it substitute for his will the will of another, and thus was it or not his voluntary act? It is impossible to define the limit to which an officer may or should go in detecting or attempting to detect crime. On the one side he has his duty to the public, to us, always. On the other hand, he must not infringe upon the rights of the citizen, no matter who he may be. He must leave the confession in such a way that you can satisfy yourselves that it is the

ultimate expression of the will of the defendant, the voluntary statement of what he knows about his connection with the case. I am repeating, now, what I have said, but this is asked by the defendant:

"The jury are instructed to wholly disregard the alleged confessions, unless you believe from the evidence that the same, if any, were freely and voluntarily made. If you believe from the evidence that the confessions, if any, were made on coercion, whether mental or physical, on the part of the officer or officers involved, you will wholly disregard such alleged confessions, if any. The only way in which you can consider the confessions, if any, in evidence is for you to believe from the evidence that the same were freely and voluntarily made."

As I say, that must be taken in connection with what I have defined to you to be the right and duty of the officers in attempting to find out those who are responsible for criminal acts.

"No confession is deemed to be voluntary if it appears to have been caused by any inducement, threat, promise, or coercion proceeding from a person or persons in authority, and if such inducement, threat, promise, or coercion gave the defendant reasonable grounds for supposing that by making a confession he would gain some advantage or avoid some evil in reference to the proceedings against him. The police having a prisoner in custody are persons in authority. Any threat or coercion, whether

mental or physical, or any hope engendered or encouraged that he will be more favorably dealt with if he will confess is enough to exclude the confession thereby superinduced, and any words spoken in the hearing of the prisoner, or any coercion, whether mental or physical, which may engender such fear or hope will render it necessary that a confession made within a reasonable time after it shall be excluded, unless it is shown by clear and full proof that the confession is voluntarily made after all hope or fear of coercion, whether mental or physical, has been fully withdrawn or explained away."

Now, in this case, as you will all recall from the evidence, this (fol. 161) defendant was questioned for a period of practically a week in what appeared to be comfortable quarters in a hotel in this city. He was excluded from having his brother visit him, which, to my mind, was not an act of coercion on the part of the police. There is a certain amount of discretion that must be used by those who are employed to enforce the law, and it seems to me that was not unreasonable. That he was ill is undoubtedly true; that he had food is undoubtedly true, if he wanted it; and, as I say, the view that is presented to you is a view to be taken as a whole: Was this man's confession of his own free will or was he coerced by intimidation, threats, or promise? Now, it appears that Burlingame had a conversation with him, I think at the station, which led up to this subject of the



signed confession. If I am mistaken about that, correct me. I think it was the station house.

Mr. O'SHEA. It was at the mission house that Burlingame made the notes, before going to number ten station.

The COURT. Where was it Mr. Burlingame took the notes?

Mr. LASKEY. At number ten.

Mr. O'SHEA. At the mission house on Monday morning.

The COURT. He took the notes at the mission house, and afterwards he met the defendant, in company with a stenographer, and the defendant asked Mr. Burlingame to ask him the questions and he would answer them. These questions were taken down in shorthand, and transcribed, presented to the defendant, and he signed the entire confession and initialed each page of it.

Now, of course, that was the most important statement, if it was admissible at all in evidence, that he made, and it is for you to determine on this subject of the admissibility of the confession whether, taking all the treatment which he had received prior to that time, he was in such condition when he signed that statement and initialed those pages that he was acting of his own free will and accord.

While most of the testimony on the issue thus presented to them could only be determined by consideration of the credibility of the various witnesses giving the testimony, there was one piece of testimony, namely, the handwriting exhibits, which speak

for themselves. With these exhibits before them they could reach but one conclusion, and that was that the defendant spoke truly when he said that the entry on the check stub was in his own handwriting.

It is true that individuals will differ as to the inference and ultimate conclusions to be drawn from testimony, but we submit that little difference can arise in reaching the proper deductions and conclusions from the testimony in this case. The record in this case almost demonstrates, aside from defendant's confession, that he participated in the murder of these three members of the Chinese Educational Mission, and that when first questioned about his knowledge or connection with the affair it was his intention to engage in a skill of wits to divert the officers and cast suspicion from himself by showing his readiness to assist in finding the murderers out. That as the investigation proceeded, and bits of information were gleaned by the officers, such as the fact that defendant's brother, Van, had gone to Riggs National Bank and presented a \$5,000 check drawn upon the deposit of the Chinese Educational Mission, and that Wan had left the Mission House and stayed at the Harris Hotel at a time when he stated he was in New York, he came to the final conclusion, as most persons burdened with a guilty conscience would do, that he would confess his crime and therefore be relieved of the burden of the mental strain occasioned by secrecy.

CONVERSATION BETWEEN K. S. WANG AND DEFENDANT  
NOT ADMISSIBLE.

While Wan was on the stand he started to state something that K. S. Wang had told him. The District Attorney objected, whereupon the following occurred:

Mr. O'SHEA. If the court please, we believe it is part of the circumstances surrounding the making of the confession, and we believe that if K. S. Wang made certain inducements or suggestions to this man, as the result of which this man made a statement, that that is proper.

The COURT. There is nothing to show that K. S. Wang had any authority to make any representations or take any part in the case.

Mr. O'SHEA. That may be true; but *if it should appear* that he was used by the police for that purpose——

The COURT. It does not appear yet.

Mr. O'SHEA. Detective Grant said, if I recollect the testimony correctly, that he did get K. S. Wang to talk to this boy.

The COURT. He said Wang talked to this defendant, but that he got him to act for the police—there is no such testimony as that.

Mr. O'SHEA. I think he sent him in.

The COURT. It may be he went so far as to say he sent him in; I do not recall the exact language, the exact testimony, but there is nothing from which you can reason he had any authority to represent the Government in this case.

Mr. O'SHEA. Very well; we make the offer to go into this conversation, and with the court's refusal to permit us to do so we take an exception. (Rec. p. 144.)

It should be noted that the offer was to go into a conversation that was clearly hearsay, without any showing or assurance to the court of its admissibility. The record does not show what the witness would have said had he been permitted to continue. We therefore submit that it was not the duty of the trial court to admit hearsay testimony on the chance that it might be admissible under some exception to the rule. Suppose Grant had authorized Wang to offer Wan an inducement to confess, there was nothing in counsel's offer to go into the conversation to show the court that Wang actually held out to Wan any inducement. On the other hand, we submit that if any inducement had actually been held out by Wang, counsel's method of trying the case is evidence that he would have brought it to the attention of the court. On its face counsel's statement shows that he had nothing to offer, but merely desired to take an exception to be argued on appeal. In the absence of any showing to the court that the testimony would have been admissible it was the trial court's duty to refuse to permit the witness to proceed and state what Wan had told him.

*Ferry vs. Henderson*, 82 App. D. C. 41, 47.

*Fitzpatrick vs. Capitol Traction Co.*, 46 App. D. C. 13.

THE JUSTICE WHO PRESIDED AT THE TRIAL HAVING  
DIED IT WAS COMPETENT FOR ANOTHER JUSTICE TO  
SETTLE THE BILL OF EXCEPTIONS.

Section 953 of the Revised Statutes as amended by the Act of Congress of June 5, 1900, 31 Stats. 270, is applicable to the District of Columbia. No inconsistency exists between it and Section 73 of the District Code. This latter Section does not undertake to say who shall, or who shall not, settle a Bill of Exceptions. It merely provides that the Bill of Exceptions shall be settled "in such manner as provided in the rules of the Court," and the only limitation the Statute places upon the power of the Court in respect of such rules is that the Court can not require the Bill of Exceptions to be sealed. Therefore the two Statutes may be followed in the District of Columbia without the one interfering with the other. *Roney v. United States*, 43 App. D. C. 553.

It is, however, contended by counsel for Wan that this Court held in the case of *Hume vs. Bowie*, 148 U. S. 245, that Section 803 of the Revised Statutes of the District of Columbia which is substantially the same as Section 73 of the District Code, required as matter of course the granting of a new trial where the trial justice died before the Bill of Exceptions was settled. But the Court was there not concerned with Section 803, R. S. D. C., but with the then existing rule of the Court made pursuant to said Section. This rule, which was Rule 64, read as follows:

64. In case the *Judge* is unable to settle the Bill of Exceptions and counsel can not settle it by agreement, a new trial shall be granted.

It will be noted that this rule refers only to "the judge," which this Court held to refer to the trial justice. But in 1909 the rule was changed to read as follows (Rule 48, Par. 3):

If the *Court* is unable to settle the Bill of Exceptions, a new trial shall be granted.

By the word "*Court*" any justice of the Court, must have been intended. If only trial justice was meant, why the change in the rules? A change of language indicates a change of purpose. It is apparent that the word "*Court*" was inserted in lieu of the word "*judge*," to meet a situation such as this. The best evidence of what this rule means is the fact that the court which made the rule by signing the Bill of Exceptions in this case interpreted it to mean that another justice than the trial justice could settle a Bill of Exceptions.

**THE CONTENTION OF DEFENDANT THAT THE COURT OF APPEALS ERRED IN HOLDING THAT HE WAS PRESUMABLY INDEBTED TO WU AT THE TIME OF THE LATTER'S DEATH.**

In delivering its opinion in this case the Court of Appeals, in passing on an error that had been assigned to the admission of certain testimony showing motive for the murder of Wu, made the following statement:

On the question of motive evidence of the financial condition of defendant at and prior to the time of the homicide was admitted over the objection and exception of defendant. These transactions had direct relation to the Mission. Two checks he had received from

Wu—one on the 27th, the day he left the Mission. He was presumably indebted to Wu at the time of the homicide.

Defendant's brief on page 147 takes issue with the Court of Appeals and states that the Court of Appeals was in error. It is claimed by defendant that no such presumption arose. In this connection we desire to direct the court's attention to page 137 of the record, in which the defendant himself testified that he had borrowed this money from Wu for the purpose of loaning it to one S. C. Hung. In view of this statement in the record, the presumption indulged in by the Court of Appeals could not have been error.

#### EXAMINATION OF DEFENDANT BY TRIAL COURT.

The record, pages 151 to 155, discloses that while he was being cross-examined the Court, of its own motion, intervened and asked Wan a number of questions. Up to this point Wan had been rather hazy about his reason for making the oral and written confessions. He had denied making the statement to Grant that the man who went to the bank was the murderer, and he also had denied stating that he wrote the check stub. He had not in his direct or cross-examination given any explanation as to what, if anything, induced him to make first the oral and then the written statement acknowledging his felonious killing of Wu. In this situation it was of the highest importance that Wan be given an



opportunity to explain fully the means used, if any, to force him, as he claimed, to confess against his will. That the Court's questions were searching can not be denied, but we submit that the situation called for searching questions. It was the court's duty to see, whether the confession should go to the jury.

It was equally the court's duty to see that when the question of its voluntariness was finally submitted to the jury it should have all the light on the subject possible. A horrible crime had been committed. The defendant, who had in writing confessed the commission of the crime, was on trial. The duty of the court to the public was no less than to the accused. It was therefore no time or place to bandy words or deal in fine discriminations. It is obvious that the trial justice by his examination of Wan had in view two objects, first, to give the defendant an ample opportunity to state unequivocally and fully what, if anything, induced him to confess to the crime for which he was on trial, and, second, to satisfy himself that the confessions should be submitted to the jury. This situation was recognized and appreciated by defendant's counsel, for we find that he not only did not make any objection, but stated that he wanted the whole of the examination to go to the jury without exception. At page 155 of the record we find the following:

Mr. O'SHEA. We felt, in view of that fact, that the questions and answers ought to be permitted to stand in the record.

The COURT. I am perfectly willing. Might I also add, Mr. O'Shea, that there was no objection made at all to the court's questions?

Mr. O'SHEA. Of course there was not, until your honor of his own motion——

The COURT. (Interposing.) Of my own volition.

Mr. O'SHEA. (Continuing.) Struck out the question and answer which we thought was vitally important to go to the jury.

The COURT. All right. It goes.

Mr. LASKEY. You want it to go to the jury?

Mr. O'SHEA. I certainly do. I want all the questions and answers of the court to go to this jury intact, the way they were asked and answered.

The COURT. Without exception.

Mr. O'SHEA. Yes.

The COURT. That is satisfactory.

After referring to the language hereinabove quoted, the Court of Appeals in rendering its decision said:

It is difficult to understand the position now assumed by counsel for defendant, after insisting that the testimony should go to the jury without objection or exception. This amounts to a complete waiver of any right to claim error on appeal. Counsel will not be permitted to thus inveigle the court into complying with a specific request for the purpose of using it as a basis for error on appeal. (Rec. p. 186.)

To the same effect was the opinion of this Honorable Court in the case of *Alexander v. United States*, 138 U. S. 353, 355, which was a capital case in which

the judgment inflicted the death penalty. There the court refused to consider an alleged error that had not been reserved by an exception, and in delivering its opinion used the following language:

But the decisive answer to this assignment is that the attention of the court does not seem to have been called to it until after conviction, when the defendant made it a ground of his motion for a new trial. It is the duty of counsel seasonably to call the attention of the court to any error in empaneling a jury, in admitting testimony, or in any other proceeding during the trial by which his rights are prejudiced, and in case of an adverse ruling to note an exception.

See also *Sparf v. United States*, 156 U. S. 51, 56.

*Holder v. United States*, 150 U. S. 91.

*Tucker v. United States*, 151 U. S. 164.

*Hickory v. United States*, 151 U. S. 303, 307.

Nor is this rule a technical one operating only to a defendant's prejudice. The people, represented by the Government, have a vital interest in the trial of persons charged with the commission of crime, and for this reason a defendant should not be permitted to refrain from asserting some right which has been accorded him for his protection, and then later (in this case more than five years later) complain that he was thereby injured.

It is not an uncommon thing for a defendant in the trial of a case to refrain from interposing an objection to some line of examination or the method of con-

ducting the same, and prefer to have the matter remain in the record for the purpose of taking advantage of it in his argument to the jury. May a defendant obtain this advantage, and having obtained and used it, have also a reversal of the judgment against him?

*Wilson v. United States*, 162 U. S. 613, 614.

That the defendant thought he would gain an advantage by the responses elicited by the court's examination is apparent from his counsel's statement to the court, "I want all the questions and answers of the court to go to this jury intact, the way they were asked and answered." But if the point had been properly reserved by an exception there was no prejudice in the questions. It is only the responses made to the questions that injured defendant. Of such injury he can not complain.

#### CHARGE TO THE JURY.

Notwithstanding that no exceptions were taken, we find that appellant has brought before this court for review the court's charge to the jury. One part of the charge complained of is as follows:

In this case, both by the nature of the testimony and by the argument of counsel, it has resolved itself into two parts—I won't say distinct, because they are dependent, interdependent. The first is, Is the defendant proven to be guilty by the circumstances which have been introduced by the Government? and the second is, Is his confession to be taken against him under the rules of law which I will state to you, which, of course,

without contradiction, I suppose, on the part of counsel, if it is admitted, will show that he was guilty of this crime? (Rec. p. 171.)

The contention is here made that this instruction amounted to telling the jury that if they received and considered the confession then they should find the defendant guilty. We submit, however, that no such inference can be drawn from the language of the court. It is perfectly clear that what the court meant was that if the confession was admitted to be true then the defendant was guilty of the crime. And we submit that this amounted to nothing more than an application of the law to a supposed state of facts—that is to say, if the confession was admitted to be true, that it contained proof of every essential element necessary to make out the crime charged in the indictment. Furthermore the court by stating “without contradiction, I suppose, on the part of counsel” really invited an objection should counsel not agree with the court. That if the confession were true it was proof of all the essential elements of the crime charged, the defendant can not successfully deny. His failure to accept the court’s invitation to make an objection and reserve an exception shows that he did not then deem the court’s statement of the law open to an attack.

Another vice of the defendant’s argument is that he singles out an expression used by the court without considering the other parts of the charge which necessarily must be considered to arrive at the court’s meaning. In other words, the jury had the whole

of the court's charge before it, and we submit that when so considered defendant's proposition can not be maintained.

Respectfully submitted that the judgment of the Court of Appeals of the District of Columbia should be affirmed.

✓ JAMES M. BECK,  
*Solicitor General.*

✓ PEYTON GORDON,  
*United States Attorney.*

J. H. BILBREY,  
*Assistant United States Attorney.*

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# SUPREME COURT OF THE UNITED STATES.

No. 127.—OCTOBER TERM, 1924.

Ziang Sung Wan, Petitioner, vs. The United States of America.	} On Certiorari to the Court of Appeals of the Dis- trict of Columbia.
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[October 13, 1924.]

Mr. Justice BRANDEIS delivered the opinion of the Court.

On January 31, 1919, the police department of the District of Columbia learned that three Chinamen, the inmates of a house in Washington occupied by the Chinese Educational Mission, had been murdered. They were known to have been alive late in the evening of January 29. Police officers were told by Li, a student, that, earlier on the same evening, he had seen at the Mission a resident of New York City named Wan. Acting under instructions of the superintendent of police, two detectives started immediately for New York, taking Li with them. On February 1, they entered Wan's room in a lodging house, found him there, and brought him to Washington. He was not formally arrested until February 9. Later, he was indicted, in the Supreme Court of the District, for the murder of one of the Chinamen; was found guilty; and was sentenced to be hanged. The Court of Appeals of the District affirmed the judgment. 289 Fed. 908. A writ of certiorari was granted. 263 U. S. 693.

The main question for decision<sup>1</sup> is whether, on the facts disclosed in the testimony of the superintendent of police, three detectives

<sup>1</sup>The indictment was found on September 30, 1919; the verdict rendered on January 9, 1920; and the sentence imposed on May 14, 1920. The time for filing the bill of exceptions, which under the rule would have expired June 21, 1920, was, on that day, extended to November 1, 1920; and it was not filed until the latter date. Before it was settled, the judge who had presided at the trial died. A motion to vacate the judgment, made on this ground, was denied on November 22, 1921. Thereupon, the bill of exceptions was signed by the Chief Justice of the Court. It was contended here, among other things, that the judgment should be set aside because a bill of exceptions can be settled only by the judge who presided at the trial. The contention is unfounded. *Roney v. United States*, 43 App. D. C. 531.

and the chief medical officer of the jail, the trial court erred in admitting as evidence statements made by the defendant to the police officers before and shortly after his formal arrest.<sup>2</sup> Four of the statements were oral. These, if admissible, were important evidence. The fifth was a stenographic report of an interrogation of the defendant conducted by the detectives, after the arrest. This report contained a full confession. The introduction of each of the statements was duly objected to on the ground that the Government failed to show that it had been voluntarily made and that from the testimony of its own witnesses the contrary appeared. The court admitted the statements. It later charged the jury: "The test of the case, and the inquiry that you will have to make in answer is: Did the questioning, did the physical condition, did the importunate questioning, if you choose to call it so, render the confession made by the defendant not his own; but did it substitute for his will the will of another, and thus was it or not his voluntary act?"

Wan was a native of China. He had come to the United States in 1916, at the age of twenty-two, as a student. In 1918, he engaged in a business which proved unsuccessful. Since December of that year, or earlier, his health had been bad. He had an attack of Spanish influenza. He suffered continuously from a chronic stomach trouble which led him to eat sparingly and irregularly. When the detectives entered his room unannounced they found him in bed. They had no search warrant; but they made a search of the room and his effects, including the bed in which he lay. They were accompanied by a New York police officer; but they did not arrest Wan. They requested that he return with them to Washington. He told them he was too sick. Li, who had been left waiting outside the closed door and was called in, told Wan that both of them were suspected of the murder. Then, Wan consented to go with the detectives to Washington.

On arrival in Washington, Wan was not put formally under arrest; but he was taken to a secluded room. In the presence of

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<sup>2</sup>With the exception of these statements, the government introduced only circumstantial evidence. The defendant testified on his own behalf asserting his innocence. He described the conditions under which the statements had been made, denied or explained them, and insisted that the confession was a suggested one.

three detectives, the superintendent of police, and Li, he was subjected there to questioning for five or six hours. Late in the evening of that first day, the detectives took him to Hotel Dewey; and, without entering his name in the hotel registry, placed him in a bedroom on an upper floor. In that room he was detained continuously one week. Throughout the period, he was sick and, most of the time, in bed. A physician was repeatedly called. It was a police surgeon who came. In vain Wan asked to see his brother with whom he lived in New York; who had nursed him in his illness; who had come to Washington at his request in January; who had returned with him to New York; and whom, as he later learned, the detectives had also brought to Washington, were detaining in another room of the hotel, and were subjecting to like interrogation.

Wan was held in the hotel room without formal arrest, *incommunicado*. But he was not left alone. Every moment of the day, and of the night, at least one member of the police force was on guard inside his room. Three ordinary policemen were assigned to this duty. Each served eight hours: the shifts beginning at midnight, at eight in the morning, and at four in the afternoon. Morning, afternoon and evening (and at least on one occasion after midnight) the prisoner was visited by the superintendent of police and/or one or more of the detectives. The sole purpose of these visits was to interrogate him. Regardless of Wan's wishes and protest, his condition of health or the hour, they engaged him in conversation. He was subjected to persistent, lengthy and repeated cross-examination. Sometimes it was subtle, sometimes severe. Always the examination was conducted with a view to entrapping Wan into a confession of his own guilt and/or that of his brother. Whenever these visitors entered the room, the guard was stationed outside the closed door.

On the eighth day, the accusatory questioning took a more excruciating form. A detective was in attendance throughout the day. In the evening, Wan was taken from Hotel Dewey to the Mission. There, continuously for ten hours, this sick man was led from floor to floor minutely to examine and re-examine the scene of the triple murder and every object connected with it, to give explanations, and to answer questions. The places where the dead men were discovered; the revolver with which presumably the murder was committed, the blood stains and the

finger prints thereon; the bullet holes in the walls; the discharged cartridges found upon the floor; the clothes of the murdered men; the blood stains on the floor and the stairs; a bloody handkerchief; the coat and pillow which had been found covering the dead men's faces; photographs, taken by the police, of the men as they lay dead; the doors and windows through which the murderer might have entered or made his escape; photostat copies of writings, by means of which it was sought to prove that Wan was implicated in a forgery incident to the murder; all these were shown him. Every supposed fact ascertained by the detectives in the course of their investigation was related to him. Concerning every object, every incident detailed, he was, in the presence of a stenographer, plied with questions by the superintendent of police and the detectives. By these he was engaged in argument; sometimes separately, sometimes in joint attack. The process of interrogation became ever more insistent. It passed at times from inquiry into command. From seven o'clock in the evening until five o'clock in the morning the questioning continued. Before it was concluded, Li, who was again in attendance, had left the Mission about midnight, worn out by the long hours. The superintendent of police had returned to his home, apparently exhausted. One of the detectives had fallen asleep. To Wan, not a moment of sleep was allowed.

On the ninth day, at twenty minutes past five in the morning, Wan was taken from the Mission to the station house and placed formally under arrest. There, the interrogation was promptly resumed. Again the detectives were in attendance, day and evening, plying their questions; pointing out alleged contradictions; arguing with the prisoner; and urging him to confess, lest his brother be deemed guilty of the crime. Still the statements secured failed to satisfy the detectives' craving for evidence. On the tenth day, Wan was "bundled up"; was again taken to the Mission; was again questioned there for hours; and there "the whole thing was again talked of and enacted." On the eleventh day, a formal interrogation of Wan was conducted at the station house by the detectives in the presence of a stenographer. On the twelfth day, the verbatim typewritten report of the interrogation (which occupies twelve pages of the printed record) was read to Wan, in his cell at the jail. There, he signed the report and

initialled each page. On the thirteenth day, for the first time, Wan was visited by the chief medical officer of the jail, in the performance of his duties. This experienced physician and surgeon testified, without contradiction, to the condition of the prisoner:

"[He] found . . . [Wan] lying in a bunk in the cell, very weak, very much exhausted, very much emaciated; he complained of abdominal pain, which was rather intense. He told witness, and witness afterwards saw, that he vomited if he attempted to take food; that it was difficult or impossible for his bowels to move unless they were assisted by an enema; witness thought he was very seriously ill; . . . ordered certain tests by the laboratory . . . ; had his blood examined and his abdomen X-rayed and had him removed from the cell to the Red Cross room; . . . concluded he was suffering from spastic colitis: [involving contraction of the bowel.] . . . The result of that contraction would be almost constant pain, excited by any further additions to the contents of the tract at that point, and vomiting and persistent constipation. . . . Witness knows defendant was in bed at least a month after his treatment was prescribed. From witness' observation and medical experience, judging from the defendant's emaciation and history he gave witness, and his condition generally, would say that when witness saw the defendant on February 13th he had been ill for a matter of weeks. . . . He told me he had been talked to all one night and had not received any medical attention, and had been in constant pain all of this time and had been unable to eat for days, and considering all those facts I came to the conclusion that he was so exhausted that he was really—he told me also that he had signed a confession."

[Then the witness was further questioned by the court.]

"Question. You thought he was so exhausted mentally that he would not know what he was signing. . . . Would he know what he was signing?

Answer. He would know what he was signing, yes.

Question. Would he be liable to sign a confession that would lead him to the gallows in that condition?

Answer. I think he would, if he wanted to be left alone.

Question. With spastic colitis, if he was accused of crime he would simply sign a paper and say, "You hang me"? That is your opinion as a medical man?

Answer. I say, if he was as sick as that and in as great pain as that, he would do anything to have the torture stopped."

The Court of Appeals appears to have held the prisoner's statements admissible on the ground that a confession made by one competent to act is to be deemed voluntary, as a matter of law, if it was not induced by a promise or a threat; and that here there was evidence sufficient to justify a finding of fact that these statements were not so induced. In the federal courts, the requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat. A confession is voluntary in law if, and only if, it was, in fact, voluntarily made. A confession may have been given voluntarily, although it was made to police officers, while in custody, and in answer to an examination conducted by them.<sup>3</sup> But a confession obtained by compulsion must be excluded whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial proceeding or otherwise. *Bram v. United States*, 168 U. S. 532.<sup>4</sup> None of the five statements introduced by the Government as admissions or confessions was made until after Wan had been subjected for seven days to the interrogation. The testimony given by the superintendent of police, the three detectives and the chief medical officer left no room for a contention that the statements of the defendant were, in fact, volun-

<sup>3</sup>*Hopt v. Utah*, 110 U. S. 574, 584; *Sparf and Hansen v. United States*, 156 U. S. 51, 55; *Pierce v. United States*, 160 U. S. 355, 357; *Wilson v. United States*, 162 U. S. 613, 623; *Bram v. United States*, 168 U. S. 532, 558; *Hardy v. United States*, 186 U. S. 224, 229; *Powers v. United States*, 223 U. S. 300, 314; *Bilokumsky v. Tod*, 263 U. S. 149, 157.

<sup>4</sup>See also *Wilson v. United States*, 162 U. S. 613, 623; *Hardy v. United States*, 186 U. S. 224, 229; *Kent v. Porto Rico*, 207 U. S. 113, 119; *Powers v. United States*, 223 U. S. 303, 313. Compare *Counselman v. Hitchcock*, 142 U. S. 547; *Brown v. Walker*, 161 U. S. 591, 596-7; *Hale v. Henkel*, 201 U. S. 43, 71; *Wilson v. United States*, 221 U. S. 361, 379; *Perlman v. United States*, 247 U. S. 7, 13.

<sup>5</sup>This testimony occupies, in its condensed form, fifty pages of the printed record. The character of the pressure applied is illustrated by the following extracts from the testimony of the detectives:

" . . . Sometimes witness has sat and talked to him, or, rather talked at him twenty minutes or half an hour, and asked him could he explain certain phases of this case, without his uttering a word or making any reply whatever."

"A good many times during the course of the investigation he would ask to be left alone, but we did not leave him alone, and we would ask him a

tary.<sup>5</sup> The undisputed facts showed that compulsion was applied. As to that matter there was no issue upon which the jury could

question, and if it was rather pointed he would say he was tired, to leave him alone, 'I will talk no more to you.' Sometimes would be twenty or thirty minutes before he would answer or say a word . . . asked him the same questions over and over again a great many times without getting any answer at all; . . .

" . . . defendant had continuously asked to be let alone and not bothered, whenever he was asked a pointed question and if he answered it it might implicate him or embarrass him; he would say, 'Let me alone, I talk no more to you tonight, I don't feel well', this was done repeatedly whenever he was pressed for an answer to a pointed question; sometimes we would leave him alone, and witness sometimes stayed there and talked at him for a while until we got tired of it . . . ; told defendant witness thought his sickness was more in his mind than in his body."

[On the eighth day, at the Mission] "Well, he sat and rolled his eyes when I asked him why he came out to the house the second time, why he did not go to the cafe instead of coming away out to the house, and he sat there and rolled his eyes at me, and Burlingame [another of the detectives] said, 'Answer his question,' and then he turned to his brother and started in the Chinese language, and Burlingame said, 'Here, don't speak Chinese. Answer Kelley's question.' Then he raised up with a coat hanger and Burlingame caught him on the shoulders and said, 'We don't want anything like that here.' This was about one o'clock in the morning, and we left somewhere around four o'clock; not much was said after four o'clock, just talking; Burlingame objected to defendant talking in Chinese because he wanted him to answer questions; requested him once and then sat him down in the chair; . . .

" . . . defendant was not permitted to sleep or to go back to hotel . . .

" . . . witness did try to force an answer out of him by asking him to answer the questions, but not by physical force or anything of that kind . . . it was on that occasion [on the ninth day, at the station house, after the all-night interrogation at the Mission] that witness told defendant, 'If you are guilty, and your brother is innocent, I want to know, for I am holding your brother just the same as I am holding you.' Witness thinks he said, 'Now is the time to tell me,' intimating to him that he had been in confinement a long time and witness wanted to know something about it; they were both in confinement and witness was anxious for him to tell about his brother; was satisfied he was guilty but did not tell him so at that time; was just about that time witness said 'things look bad for you' or 'things look black for you' and you ought to tell me the truth. . . . Went over practically and rehearsed all the case as far as they had learned about it and related all the circumstances against him; told him a lot of things, but never offered any inducement, because witness has had too much experience in that line."

[Witness went to the station house Sunday night for the purpose of still talking to him about the case.] "I wanted to straighten out a great many



properly have been required or permitted to pass. The alleged oral statements and the written confession should have been excluded.\*

*Reversed*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*

circumstances which pointed to him . . . wanted to know from him whether he was guilty; wanted him to tell the truth; asked him on a number of occasions to tell the truth, and those circumstances which pointed very strongly against him, strongly indicated to witness' mind that he knew a great deal more about the case than he told of; that we had caught him in several contradictory statements and witness said: 'We are all firmly of the belief that you know who killed those men'; sat and watched him and looked at him fully and for a long time after I would tell him those things and would say 'Now you think it over' and stayed right there with him.

Q. Your purpose in telling him those things was to make him talk?

A. My purpose was to get him to tell me the truth about this case.

Q. Answer the question, will you?

A. Well, he had to talk."

" . . . Practically every admission he made was in answer to questions which witness asked himself; 'had gotten practically everything that I thought was important' and left the details to Burlingame and Kelly."

\*Compare *Boyd v. United States*, 116 U. S. 616, 631; *Weeks v. United States*, 232 U. S. 383, 398; *Silverthorne Lumber Co. v. United States*, 251 U. S. 192, 392; *Gould v. United States*, 255 U. S. 298; *Amos v. United States*, 255 U. S. 313, 316; *Bilokumsky v. Tod*, 263 U. S. 149, 155; and "Progress of the Law, 1921-1922, Evidence," [Chafee] 35 Harv. L. Rev. 428, 439.

